

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Ninth Assembly

**Sessional Committee
on
Environment and Sustainable Development**

*The efficacy of establishing an
Environmental Protection Agency
in the Northern Territory*

Volume 1

COMMITTEE REPORT NO. 2

February 2005

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Contents

CHAIR'S PREFACE	ix
MEMBERS OF THE COMMITTEE	xi
COMMITTEE SECRETARIAT	xiii
RECOMMENDATIONS.....	xv
FINDINGS.....	xvii
EXECUTIVE SUMMARY	xix
CHAPTER 1 INTRODUCTION	1
1.1. TERMS OF REFERENCE.....	1
1.2. FUNCTIONS OF THE COMMITTEE	1
1.3. THE NEED FOR THE INQUIRY	2
1.4. INQUIRY METHOD	3
1.4.1 Information Requested.....	3
1.4.2 Research.....	3
1.4.3 Briefings	3
1.4.4 Call for Public Comment	4
1.4.5 Public Hearings.....	4
1.4.6 Deliberative Meetings and Report Writing.....	4
1.4.7 Tabling of Final Report.....	5
1.5 COMMITTEE EXPENDITURE	5
1.6 DEFINITIONS.....	5
1.6.1 Environmental Protection Agency or Authority.....	5
1.6.2 Principles of Ecologically Sustainable Development	6
1.6.2.1 Objectives of Ecologically Sustainable Development	6
CHAPTER 2 ARGUMENTS FOR AND AGAINST	9
2.2 ARGUMENTS FOR.....	11
2.3 ARGUMENTS AGAINST	20

CHAPTER 3 CURRENT ENVIRONMENTAL PROTECTION ARRANGEMENTS IN THE NORTHERN TERRITORY	27
3.1. OVERVIEW.....	27
3.2. NORTHERN TERRITORY GOVERNMENT DEPARTMENTS	29
3.2.1 Department of Infrastructure, Planning and Environment.....	30
3.2.1.1 Office of Environment and Heritage	30
3.3 DEPARTMENT OF BUSINESS, INDUSTRY AND RESOURCE DEVELOPMENT.....	30
3.3.1 Minerals and Energy Group	33
3.4 DEVELOPMENT CONSENT AUTHORITY.....	35
3.5 COMMONWEALTH DEPARTMENT OF ENVIRONMENT AND HERITAGE.....	36
CHAPTER 4 CONSIDERATIONS AND IMPLICATIONS	39
4.1. OVERVIEW.....	39
4.2. SCOPE AND STRUCTURE CONSIDERATIONS	40
4.2.1 Functions, Roles and Responsibilities.....	46
4.2.2 Structure	54
4.2.3 Implications for Implementation.....	55
4.3. DEMOGRAPHIC AND GEOGRAPHIC IMPLICATIONS	57
4.3.1 Northern Territory Community.....	57
4.3.2 Indigenous Territorians	59
4.4 LEGISLATIVE IMPLICATIONS	62
4.5 RESOURCE IMPLICATIONS	66
CHAPTER 5 EPA MODELS	73
5.1. OVERVIEW.....	73
5.2 EPAS IN AUSTRALIA.....	73
5.2.1 Western Australia Environmental Protection Authority.....	73
5.2.2 South Australia Environmental Protection Authority.....	82
5.2.3 Tasmanian Model.....	93
5.2.3.1 Tasmania's Environmental Management and Pollution Control Board	93
5.2.3.1.1 Key Features.....	93
5.2.3.1.2 Functions of the Environmental Management and Pollution Control Board.....	94

5.2.3.1.3	Relevant Legislation	94
5.2.3.1.4	Environmental Agreements	96
5.2.3.1.5	Environmental Improvement Programmes	96
5.2.3.1.6	Environment Protection Policies	97
5.2.3.1.7	Environment Protection Policy Review Panel	97
5.2.3.1.8	Environment Protection Fund	98
5.2.3.1.9	Resource Management and Planning Appeals Tribunal	98
5.2.3.2	Department of Primary Industries, Water and Environment	100
5.2.3.3	Resource Planning and Development Commission	101
CHAPTER 6 RECOMMENDED OPTIONS		105
6.1	OVERVIEW	105
6.2	OPTION A	105
6.3	OPTION B	106
6.3.1	Introduction	106
6.3.2	Conceptual Model	106
6.3.3	Roles and Functions	109
6.3.4	Development Consent Authority	109
6.3.5	Planning	109
6.3.6	Referrals and Appeals	109
6.3.7	Advisory bodies	109
6.3.8	Review Periods	109
6.3.9	Staged introduction	110
6.4	OPTION C	111
6.4.1	Introduction	111
6.4.2	Conceptual Model	111
6.4.3	Functions and Roles	112
6.4.4	Independent Environment Commissioner	112
6.4.5	Environment Protection Commission	112
6.4.6	Sustainable Development Authority	113
6.4.7	Advisory Bodies	113
6.4.8	Appeals Process	113

6.4.9	Structure	113
6.4.10	Features of Option C.....	116
6.5	OPTION D	117
6.5.1	Introduction	117
6.5.2	Conceptual Model	117
6.5.3	Scope.....	118
6.5.4	Functions and roles.....	118
6.5.5	Advisory Bodies	118
6.5.6	Appeals process.....	118
6.5.7	Structure	119
6.5.8	Features of Option D.....	121
APPENDIX 1:	FULL TERMS OF REFERENCE.....	123
APPENDIX 2:	SUMMARY OF NORTHERN TERRITORY GOVERNMENT AGENCY RESPONSES	127
APPENDIX 3:	LIST OF WRITTEN SUBMISSIONS RECEIVED	145
APPENDIX 4:	LIST OF ATTENDEES AT PUBLIC HEARINGS	151
APPENDIX 5:	COMPARISON TABLE OF EXISTING EPA MODELS AUSTRALIA AND NEW ZEALAND	155
APPENDIX 6:	COMPARISON OF PENALTIES FOR ENVIRONMENTAL OFFENCES, AUSTRALIA AND NEW ZEALAND	193
APPENDIX 7:	COMPARISON OF MAXIMUM PENALTIES FOR ENVIRONMENTAL OFFENCES, AUSTRALIA AND NEW ZEALAND	201

List of figures

FIGURE 3.1:	NORTHERN TERRITORY DEPARTMENTAL DIVISIONS WITH MAJOR RESPONSIBILITY FOR AND ASSOCIATION WITH ENVIRONMENTAL PROTECTION	29
FIGURE 5.1:	WESTERN AUSTRALIA'S EPA ORGANISATION STRUCTURE	75
FIGURE 5.2:	SOUTH AUSTRALIA'S EPA ORGANISATION STRUCTURE	83
FIGURE 6.1:	ORGANISATION CHART OF OPTION B	108
FIGURE 6.2:	ORGANISATION CHART OF OPTION C	115
FIGURE 6.3:	ORGANISATION CHART OF OPTION D	120

List of tables

TABLE 1.1:	SALARY AND ADMINISTRATION EXPENSES	5
TABLE A2.1:	SUMMARY OF NORTHERN TERRITORY GOVERNMENT AGENCY RESPONSES	128
TABLE A3.1:	WRITTEN SUBMISSIONS RECEIVED	146
TABLE A4.1:	KATHERINE PUBLIC HEARING – 31 MAY 2004	152
TABLE A4.2:	TENNANT CREEK PUBLIC HEARING - 1 JUNE 2004	152
TABLE A4.3:	ALICE SPRINGS PUBLIC HEARING - THURSDAY 3 JUNE 2004	152
TABLE A4.4:	DARWIN PUBLIC HEARING – 11 JUNE 2004	153
TABLE A4.5:	PALMERSTON PUBLIC HEARING – 19 JULY 2004	153
TABLE A5.1:	COMPARISON OF EXISTING EPA MODELS, AUSTRALIA AND NEW ZEALAND	156
TABLE A6.1 - A6.8:	COMPARISON OF PENALTIES FOR ENVIRONMENTAL OFFENCES, AUSTRALIA AND NEW ZEALAND	194
TABLE A7.1:	COMPARISON OF MAXIMUM PENALTIES FOR ENVIRONMENTAL OFFENCES, AUSTRALIA AND NEW ZEALAND	202

Chair's Preface

The Environment and Sustainable Development Committee has worked in a bipartisan manner for more than a year to investigate the establishment of an Environmental Protection Agency in the Northern Territory.

This inquiry is the Committee's second during the Ninth Legislative Assembly, following an inquiry into the incursion of cane toads into the Northern Territory.

To understand the complex legislative, regulatory and structural environment issues, the Committee visited Western Australia and South Australia and received invaluable advice about the strengths and weaknesses of EPAs and critical considerations around supporting legislation, structure and practical environment regulation and protection.



The Member for Daly also assessed the environment protection model in Tasmania and I drew on extensive discussions I had held in Queensland.

The Committee's decision to study relevant interstate jurisdictions before embarking on a Territory-wide consultation process ensured it was equipped to answer questions from Territorians during the public hearings.

Consultation with Territorians regarding the issue of whether or not to establish an EPA, and if so, what model, occurred through both written and oral submissions.

Public hearings were held in Darwin, Palmerston, Tennant Creek and Alice Springs.

At the end of this extensive inquiry, all committee members believed the Territory's environment protection system and legislation needed to be enhanced whilst recognising the significant long standing commitment of regulatory agencies of environmental protection. Committee members differed on models and scope. These differences are reflected in models proposed in Chapter Six of this report.

We are the custodians of our environment for future generations. It is our hope that this inquiry provides solutions to the challenges of balancing environment protection needs with the development of the Territory's incredible potential.

I acknowledge the dedication and hard work of the Committee members, Secretariat and the tremendous assistance we received from Western Australia, South Australia, Tasmania and Queensland who were very generous with their time and advice.

Ms DELIA LAWRIE, MLA
Chair

Members of the committee



Ms Delia Phoebe LAWRIE, MLA

Member for Karama

Party : Australian Labor Party
Parliamentary Position: Government Whip, Deputy Chairman of Committees
Committee Membership:
 Standing: House, Public Accounts, Subordinate Legislation and Publications
 Sessional: Environment and Sustainable Development
 Select: Estimates
 Chair of: Subordinate Legislation and Publications, Environment and Sustainable Development



Mr Timothy Denney BALDWIN, MLA

Member for Daly

Party : Country Liberal Party
Parliamentary Position:
Committee Membership:
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Mr. Matthew Thomas BONSON, MLA

Member for Millner

Party : Australian Labor Party
Parliamentary Position: Deputy Chairman of Committees
Committee Membership:
 Standing: Legal and Constitutional Affairs, Public Accounts, Standing Orders
 Sessional: Environment and Sustainable Development
 Select: Estimates



Mr Stephen DUNHAM, MLA

Member for Drysdale

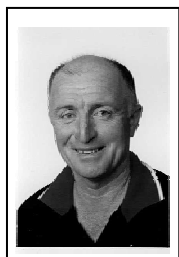
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Committee Membership:
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Mr Elliot McADAM, MLA

Member for Barkly

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Mr Gerry WOOD, MLA

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Member for Nelson

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The Committee acknowledges the assistance of the Northern Territory Parliamentary Library and Information Service.

Recommendations

The Committee recommends that:

1. The broad principles of ecologically sustainable development underlie any reform to the existing arrangements for environmental protection in the Northern Territory.
2. The public's right to know, the public's right to be informed, the public's right to be heard, and the public's right to object be considered in any amendments to the existing arrangements for environmental protection.
3. In broad terms, the objective of the EPA or similar is to protect the environment, and to control pollution.
4. A thorough assessment of the current environmental protection arrangements in the Northern Territory is undertaken.
5. An extensive audit of Northern Territory environmental protection legislation and practice be conducted.
6. A restructure of the existing environmental protection arrangements is undertaken dependent upon the results of Recommendations 4 and 5 above.
7. An EPA or similar is considered a beneficial addition to the Northern Territory's environmental protection measures and standards.
8. All options, particularly those outlined in Chapter 6 of this report, are considered viable, should Government decide to pursue the establishment of an EPA or similar in the Northern Territory.
9. The EPA or similar be independent in its operation.
10. The EPA or similar should not reduce the strength and effectiveness of existing environmental protection measures but enhance them.
11. An EPA or similar should not be an excessive bureaucracy, rather it should be an efficient structure reflecting the Territory's jurisdictional size.
12. The structure of an EPA or similar, be easily incorporated into current arrangements for environmental protection.
13. Transitional phases are in-built into the implementation of an EPA or similar, in the Territory.
14. Provision for review periods should be established.
15. Reference groups and advisory bodies are convened as required.
16. The EPA or similar be given powers to observe, comment and audit environmental protection regulations and regulators in the Northern Territory.
17. The EPA or similar be given powers to set best practice standards and guidelines.

18. Third party appeals be a feature of Northern Territory's environmental protection arrangements, to provide for greater transparency and public participation in environmental decision-making.
19. Public reporting becomes a strong feature of Northern Territory's environmental protection regime.
20. The issues and concerns of the Northern Territory community including those issues more specific to indigenous Territorians are given due consideration in any proposed reform.
21. Education programs for the general community regarding environmental protection are continued and enhanced.

Findings

The Committee views the findings of this inquiry as being of equal importance to the recommendations.

The Committee found that:

1. In general, community groups, particularly environmental groups, supported the creation of an EPA or similar in the Northern Territory.
2. Largely, industry and business did not support the creation of an EPA in the Northern Territory.
3. The Northern Territory community largely recognises the need to reform the Territory's environmental protection arrangements.
4. The current arrangements for environmental protection in the Northern Territory would greatly benefit from an extensive audit of environmental protection legislation and practice.
5. Several submissions called for an examination of Northern Territory's process and system of Environmental Impact Assessment.
6. An EPA or similar could enhance and strengthen the current state and level of environmental protection in the Northern Territory.
7. An EPA could improve the Northern Territory's level of adoption of national and international environmental protection measures and standards.
8. Not one current operating model examined was applicable in entirety to the Northern Territory.

Executive summary

The three volumes of this report constitute the results of the inquiry, most particularly the findings, recommendations and Chapter 6 of Volume 1 – Recommended Options. Volume 1 presents the pieces of evidence received in line with the Committee considerations of the Terms of Reference for the inquiry.

The Committee received evidence from briefings, written public comments, public hearings, and from its own research.

Key evidence was obtained from Western Australia EPA and South Australia EPA, which provided a comparative analysis of two very different models of EPA, an independent advisory model and an independent regulatory model. The Tasmanian model with no EPA but an Environmental Management and Pollution Control Board was also examined.

Public participation by way of written submissions and attendance at the public hearings in Katherine, Tennant Creek, Alice Springs, Darwin and Palmerston was both extremely important and complimentary to other evidence collected.

The Committee found that in general, community groups, particularly environmental groups, supported the creation of an EPA or similar in the Northern Territory. The Committee also found that largely, industry and business did not support the creation of an EPA or similar in the Northern Territory.

The Committee also found that most submissions identified room for improvement in the current environmental protection arrangements in the Northern Territory.

While the Committee found there were certain elements in all models examined that could be applicable to the Northern Territory context, not one operating model in entirety was preferred over another for the Northern Territory. As a result, Chapter 6 – Recommended Options, is an inclusive approach adopted by the Committee to encompass the varying standpoints of its members.

Chapter 1 Introduction

1.1. TERMS OF REFERENCE

On 27 November 2002, the Legislative Assembly established the Sessional Committee on Environment and Sustainable Development to inquire into, report and make recommendations on matters referred to it by the relevant Minister or resolution of the Legislative Assembly on any matter:

1. concerned with the environment or how the quality of the environment might be protected or improved; and
2. concerned with the sustainable development of the Northern Territory.

The Legislative Assembly referred to the Committee to inquire into and report on the efficacy of establishing an Environmental Protection Agency in the Northern Territory, inclusive of but not restricted to:

- (a) arguments for and against the establishment of an Environment Protection Agency for the Northern Territory;
- (b) options for the structure of an Environmental Protection Agency, taking account of the demographic, geographic and financial context of the Northern Territory;
- (c) and if a particular model is recommended, options for its staged introduction.

Appendix 1 provides the full Terms of Reference for all inquiries (to date) of the Ninth Assembly Sessional Committee on Environment and Sustainable Development.

1.2. FUNCTIONS OF THE COMMITTEE

The Committee derives its authority from the *Northern Territory (Self Government) Act, 1978* and the *Legislative Assembly (Powers and Privileges) Act*. Under its Terms of Reference, the Committee is empowered to appoint sub-committees and to refer to any such sub-committee any matter that it is empowered to examine. Three members of the Committee constitute a quorum of the Committee whilst two members of a sub-committee constitute a quorum of that sub-committee.

The Committee or any sub-committee also has the power:

- (a) to send for persons, papers and records;
 - (b) to adjourn from place to place;
 - (c) to meet and transact business in public or private session;
 - (d) to sit during any adjournment of the Assembly; and
 - (e) to print from day to day such papers and evidence as may be ordered by it.
- Unless otherwise ordered by the Committee, the publication of a daily Hansard transcript of any Committee proceeding held in public is required.

1.3. THE NEED FOR THE INQUIRY

The necessity for the inquiry was acknowledged by the Legislative Assembly of the Northern Territory in response to community concerns about the adequacy of environmental protection in the Northern Territory, particularly with regard to major developments. The community expects government, industry and itself to manage activities with due consideration for the prevention or minimisation of potential negative or harmful impacts on health, safety and the environment, with a view for the sustainable use of our precious and finite natural resources.

The Legislative Assembly required the Committee to inquire whether the possible addition of an Environmental Protection Agency or Authority could strengthen and improve upon existing measures for environmental protection.

On debate on the motion, for the Legislative Assembly to accept the Sessional Committee's Terms of Reference for the inquiry, Minister Burns stated:

Madam Speaker, this has been a fairly wide ranging debate today from this morning onwards. There have been many issues canvassed, including the establishment of the Environment and Sustainable Development Committee, examining the efficacy of an EPA, an environmental protection agency. It is my understanding that in other states an environmental protection agency provides a structure to examine and report on, and looks at addressing and remedying, environmental issues. ... the Committee will be looking at a structure that can explore a whole range of environmental issues as they arise - I am talking about an EPA - rather than the Committee simply having a whole set of individual and discrete environmental issues that it is given. Considering the time available and the range of issues involved, it would make it very difficult for the Environment and Sustainable Development Committee to look at each one in depth.

This is a more strategic approach. Determining whether an Environmental Protection Agency would be efficacious, and I think that is the way to go. It shows how this government is interested in working strategically. It will also give community members, and different groups within the community ... to come along and give their points of view. Inherent in the establishment of an EPA there are quite considerable resource implications. This Committee is also charged with looking at the feasibility in that way, but also taking account of the unique nature of the Northern Territory; its demographic, geographic and financial context. I believe all those things are important. It is a strategic way for the Committee to go. I recommend the first term of reference for that very reason.¹

In addition Minister Vatskalis stated:

Let's find out first of all if we need anything. Do we have to go through the process, the expenditure, to establish the EPA? It does not matter what I personally believe; I personally believe we want an EPA, we need an EPA,

¹ Minister Burns, Ninth Assembly First Session – 27 November 2002 - Parliamentary Record No: 9

but let's find out if we really need an EPA. What is the point of actually starting an organisation that can cost millions of dollars, another bureaucratic structure, if at the end we do not need it? But, let's find out about it. ... Anywhere else in Australia there is an Environmental Protection Agency, an environmental protection authority, a mining industry, and heavy and light industry which work very well with them. But not in the Territory. If we have one in the Territory it will work to our benefit. It is about time you were looking at an EPA. It is the time to avoid the mistakes other states and territories made in the past.²

1.4. INQUIRY METHOD

The Committee undertook the following program:

1.4.1 Information Requested

- Information was requested from all Northern Territory Government Agencies and Authorities regarding their environmental protection and management functions and responsibilities.
- Appendix 2 provides a summary of these agency responses.

1.4.2 Research

- Research was conducted and summary papers produced.
- Research material incorporated into the body of this report.

1.4.3 Briefings

The Committee received specialist briefings from the following people and organisations:

- Mr Ian Prince, Director of Policy Development, Department of Business, Industry and Resource Development
- Dr Wally Cox, Chairperson as well as key staff of Western Australia Environmental Protection Authority
- Dr Paul Vogel, Chairperson/ Chief Executive as well as key staff from South Australia Environmental Protection Authority
- Professor John Bailey, Associate Professor of Environmental Assessment, School of Environmental Science, Murdoch University, Perth, Western Australia
- Mr Jack Savage, Managing Director and key staff from Peko Rehabilitation Pty Ltd, Tennant Creek
- Mr Joe Ariti, Chief Executive and staff from Giants Reef Mining Ltd, Tennant Creek
- Mr Warren Jones, Jones, Deputy Chairperson of the Tasmanian Environmental Management and Pollution Control Board and also the Director Environmental

² Minister Vatskalis, Ninth Assembly First Session – 27 November 2002 - Parliamentary Record No: 9

Management, with Tasmania's Department of Primary Industries, Water and Environment (Briefing received by Mr Tim Baldwin, MLA on behalf of the Committee)

Briefings to the Committee are used as a tool in gathering particular, pertinent and sometimes 'confidential' information required by the Committee. Briefings are not open to the public, unless ordered by the Committee. Regarding the referred matter, the Committee resolved that Hansard transcripts of the briefings received by the Committee be made public.

NOTE: Transcripts were not produced for all briefings. Those that were produced, are contained in Volume 3 of this report. All transcripts are a verbatim and unedited proof of the proceedings.

1.4.4 Call for Public Comment

- Public comment was invited.
- The Committee received thirty-three (33) written submissions. Appendix 3 provides a list of these submissions.
- These submissions are contained within Volume 2 of this report.

1.4.5 Public Hearings

The Committee held public hearings at the following locations:

- | | |
|---|--|
| <ul style="list-style-type: none"> • Katherine – 31 May 2004 • Tennant Creek – 1 June 2004 • Alice Springs – 3 June 2003 | <ul style="list-style-type: none"> • Darwin – 11 June 2004 • Palmerston – 19 July 2004 |
|---|--|

Appendix 4 provides a list of people who attended the public hearings.

Hearings were open to the public, including the media. The media was able to report any public session of the Committee, unless otherwise ordered by the Committee.

The Committee, under its Terms of Reference, was able to authorise the televising of hearings under such rules as determined by the Speaker of the Legislative Assembly. Transcripts of the proceedings were produced by Hansard.

1.4.6 Deliberative Meetings and Report Writing

- Deliberative meetings were held to discuss the drafting of this report, including the content, findings and recommendations.
- The deliberative meeting format is used for private meetings of the Committee where "confidential" matters and the proceedings of the Committee are

discussed, together with general administrative business. Deliberative meetings are recorded in the Minutes of Committee Proceedings.

1.4.7 Tabling of Final Report

Final report was tabled in the Legislative Assembly of the Northern Territory on the 17th February 2005.

1.5 COMMITTEE EXPENDITURE

The Committee's employee and administration expenses for the conduct of the Inquiry from November 2003 to February 2005 are reflected in the following table:

Table 1.1: Salary and Administration Expenses

ITEM	\$
Employee expenses	47,000
Operational	23,000
Total	70,000

1.6 DEFINITIONS

1.6.1 Environmental Protection Agency or Authority

In this report, the acronym EPA is used in general terms to refer to either an agency or an authority, unless referring to a particular authority or agency name.

The Department of Infrastructure, Planning and Environment (DIPE) informed the Committee that:

The acronym EPA, as used in Australia, can mean either an Environment Protection Authority or an Environment Protection Agency.

Environment Protection Authority – can mean a statutory government body (with an independent Board that makes policy and strategic decisions or recommendations to Government in relation to environment protection and/or environmental assessment matters). While the Board of an Environment Protection Authority is usually serviced by the relevant Government environment agency and may have its own dedicated full-time staff, it would usually be accountable directly to a Minister.

Environment Protection Agency – usually refers to a government department/office that implements the policy and strategic decisions developed by the Government. The Agency is generally responsible to a Chief Executive and a Minister for implementing the day-to-day regulation of environmental protection activities, and would be gazetted as a government agency in the Administrative Orders Arrangements.

*An Environment Protection Agency does not usually include parks and wildlife or conservation and natural resource management functions within its portfolio responsibilities.*³

1.6.2 Principles of Ecologically Sustainable Development

As defined in Section 3A of the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*, the principals of ecologically sustainable development are:

1. *decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;*
2. *if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;*
3. *the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;*
4. *the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;*
5. *improved valuation, pricing and incentive mechanisms should be promoted.*⁴

1.6.2.1 Objectives of Ecologically Sustainable Development

1. *Precautionary principle*

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by: careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and an assessment of the risk-weighted consequences of various options.

2. *Intergenerational equity*

The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

3. *Conservation of biological diversity and ecological integrity*

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

³ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

⁴ Austlii Database, Commonwealth of Australia Consolidated Acts, *Environmental Protection and Biodiversity Conservation Act 1999*, http://www.austlii.edu.au/au/legis/cth/consol_act/
Accessed 25 October 2004

4. *Improved valuation, pricing and incentive mechanisms*
environmental factors should be included in the valuation of assets and services.
polluter pays i.e. those who generate pollution and waste should bear the cost of containment, avoidance, or abatement
the users of goods and services should pay prices based on the full life cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes
environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, which enable those best placed to maximise benefits and/or minimise costs to develop their own solutions and responses to environmental problems.⁵

⁵ Australian Government, Department of Environment and Heritage Website, 2004, 'Intergovernmental Agreement on the Environment', <http://www.deh.gov.au/esd/national/igae/>, Accessed 24 August 2004

Chapter 2 Arguments for and against

2.1 OVERVIEW

Of the submissions that commented on this first section of the Committee's Terms of Reference, many submissions did not reject the idea of an EPA being established in the Northern Territory. However, most submissions commented on the need for closer examination of the existing arrangements to avoid the creation of another bureaucratic structure. The arguments against the establishment of an EPA cautioned the Committee against complicating the existing measures of environmental protection in the Territory. These arguments however did not look at the success and effectiveness of EPAs or similar structures in other Australian jurisdictions in providing environmental protection. Nor did they comment on the merits of an EPA possibly enhancing or improving upon the existing measures of environmental protection in the Northern Territory.

In a correspondence from the Department of the Chief Minister, the following questions were posed:

1. *Is there any evidence that the current administrative arrangements do not serve adequately to fulfil the environment protection task?*
2. *Irrespective of the answer to (a) above, are there any disadvantages in retaining the status quo, in terms of current best practice in other jurisdictions and prevailing public perceptions?⁶*

The correspondence further elaborated that if the answer to both questions is "no", then there is strong argument for retaining the current administrative arrangements for environmental protection in the Northern Territory. If however, the answer to either question is yes, then the possibility that an EPA or similar may improve or enhance the existing arrangements needs to be explored.

The Department of Business, Industry and Resource Development (DBIRD) advised the Committee that:

The Northern Territory Government currently has both the legislative regime and the regulatory capacity to adequately manage and protect the environment. ...

This division of responsibilities has worked well to date and to move to another model will require a confident expectation that the costs of doing so will be realised in better environmental and economic outcomes for the Territory.⁷

⁶ Correspondence from Mr Paul Tyrrell, Chief Executive, Department of the Chief Minister, 20 December 2003, to the Chair, Ms Delia Lawrie, MLA

⁷ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

The Landcare Council of the Northern Territory expressed that:

The EPA issues will be very different to the rest of Australia because of the different values, land holdings and activities in the NT.⁸

The Central Land Council is of the opinion that:

The Northern Territory is the only place in Australia without legislation protecting the environment from impacts caused by development, pollution and poor environmental practices. Environmental protection legislation also has the potential to play a significant role in promoting sustainable development in the Northern Territory.

The Northern Territory, on an international level, should have legislation in place for protection of the environment as Australia is a signatory to the 1992 Earth Summit to prevent environmental degradation and to the Basel Convention for the safe disposal of hazardous wastes.⁹

DIPE questioned the reasons for the lack of public confidence in the present environmental protection regime stating:

It is not clear from the current calls for an EPA in the Northern Territory whether this stems from:

- a) a lack of confidence by the community with the existing arrangements;*
- b) in the standard of environmental protection that is practised in the Northern Territory; and/or*
- c) particular interest groups who may be dissatisfied with their level of involvement with the present system.¹⁰*

The Department of Health and Community Services the Committee argued that:

One of the limitations of the existing structure of environment protection in the NT is that since the Chief Executive Officer is a public sector employee and answerable to the minister his/her ability to act independently of the government may be questioned. The existing departmental structure combining the Office of Environment and Heritage with Planning and Infrastructure Units may be viewed by the general public as having the potential to cause a conflict of interest.¹¹

Litchfield Shire Council presented their opinion stating that:

The environment should be the prime concern of every government as it is what sustains human and other life and in this context it should be in everyone's interest to ensure that the Territory has an Environmental

⁸ Submission No. 3, Landcare Council of the Northern Territory, 5 March 2004

⁹ Submission No. 4, Central Land Council, 8 March 2004

¹⁰ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

¹¹ Submission No. 20, Department of Health and Community Services, 2 April 2004

Protection Agency entrusted with the broad objective of protecting the Territory's environment and the capacity to achieving this objective.¹²

2.2 ARGUMENTS FOR

Arguments in favour of an EPA in the Northern Territory include:

- An EPA can integrate all environmental protection legislation, measures and departmental arrangements for the protection of Northern Territory's environment
- An EPA can provide more stringent environmental protection measures in the Northern Territory.
- An EPA can provide greater accountability and transparency for government, business and industry involved in development.
- An EPA can assist all individuals and corporations to be more aware of their impacts on their environment and more accountable for their actions in regard to the environment.
- An EPA can assist the Northern Territory keep up with the state of environmental protection measures in Australia and the rest of the world.
- An EPA can assist the Northern Territory to contribute to Australia's State of the Environment Reporting.
- The establishment of an EPA creates an independent watchdog with strong powers to oversee the protection of the Northern Territory's environment.
- An EPA can create greater community involvement and participation in the process of environmental protection

From Steve Peters (private citizen):

I think the NT could benefit greatly from an EPA. Our Government's timely proposal could put the NT in step with other states. We can still intervene in time to safely preserve enormous expanses of pastoral land and world-heritage bushland.

At a time when such natural environments are growing increasingly rare elsewhere in the world, our responsible management of resources would be rewarded by steady growth of tourism.¹³

The position of Tennant Creek Town Council is that it:

supports the establishment of an adequate Environmental Protection Agency for the Northern Territory.¹⁴

The Arid Lands Environment Centre is of the opinion that:

The NT is currently on the cusp of a major development phase in its history, particularly in the Top End. NT Governments, whether Labour or CLP, are

¹² Submission No. 17, Litchfield Shire Council, 2 April 2004

¹³ Submission No. 9, Steve Peters, 23 March 2004

¹⁴ Submission No. 10, Tennant Creek Town Council, 26 March 2004

going to continue championing major projects such as onshore gas and the Daly Basin. The potential environmental impacts of such projects are obviously going to be significant, and it is therefore good governance to set up an independent EPA that is at arms length to government.

In central Australia, we have seen two chemical spills on the Tanami road in recent years, with the first poorly investigated by WorkSafe. An EPA would presumably be more focused and would do a better job.

We are also seeing the biodiversity of central Australia suffering under a 'death-by-a-thousand-cuts' from the spread of Buffel Grass and other weeds, uncontrolled fires, feral animals and piecemeal land-clearing on pastoral properties.

At present, there is only one position within the NT government dedicated to the policing of environmental laws in central Australia. This position has far too big a work load to ensure that the government responsibly protects land, soil and water through environmental laws. The Arid Lands Environment Centre would like to see numerous positions take on this role through the establishment of an EPA in central Australia.

If the government is to get serious about policing its environmental laws, a review of all laws protecting soil, water, vegetation and land needs to occur. An example of the government's unwillingness to police its current laws is the practice of administering vegetation clearing applications after a breach of the clearing guidelines has occurred. This has created a precedent that encourages land holders to ignore current environmental acts. We believe that the creation of an EPA, in conjunction with strong legislative backing, is imperative for the effective protection of the NT's natural environment.¹⁵

Darwin City Council (the Council) informed the Committee that the Council:

- I. supports in principle the establishment of a single Environment Protection or similar Agency for the Northern Territory;*
- II. would expect further consultation on issues relating to Local Government generally and Darwin City Council specifically.*
- III. would not support the devolution of any powers duties or functions to Local Government without:*
 - Devolution of Town Planning powers and,*
 - Ongoing financial and non financial support.¹⁶*

Litchfield Shire Council listed a number of recent and major projects in the Territory, which they believe are likely to have a very significant impact on the environment:

- (a) Proposed broad acre agriculture in the Daly area including the possibility of the growing of genetically modified crops.*
- (b) LNG Facility at Wickham Point*

¹⁵ Submission No. 15, Arid Lands Environment Centre, 1 April and 3 June 2004

¹⁶ Submission No. 16, Darwin City Council, 2 April 2004

- (c) *Proposed Glyde Point Industrial Development in the Gunn Point area*
- (d) *The new East Arm Port Facilities and the escalation of ship traffic within the Darwin Harbour*
- (e) *The new Adelaide to Darwin railway line has the potential to create major new industries in parts of the Northern Territory where before they may not have been feasible due to inaccessibility and high transport costs*
- (f) *The expansion of defence forces into the Territory and the large training exercises associated with this build up*
- (g) *The possible construction of a gas pipeline carrying gas from the Arafura Sea gas field to the southern states gas pipeline and*
- (h) *The corresponding population increase that will be associated with these new industries and the need to provide appropriate services.*

Further, Litchfield Shire Council stated:

The development examples and no doubt many others will have the effect of negatively contributing to the quality of the Territory's environment unless they are undertaken in a "sustainable" and controlled way and as such the Council supports the establishment of an Environmental Protection Agency for the Northern Territory to act as the environmental watchdog and regulator for these and future development which is sure to intensify.¹⁷

DIPE offered the argument that:

The availability of board members with specialist expertise to supplement the advice received by the Government from its own environmental officers could assist in resolving particular environmental issues and lead to better policy and strategic directions for environmental management. An EPA board/commissioner would also be able to investigate and give independent advice on matters requested by the Minister.

The perception that an EPA would provide a greater level of independence and transparency in the administration of environmental protection by the Government is likely to increase the public's confidence in these matters.¹⁸

The Arid Lands Environment Centre believes that there are inadequacies in the current Northern Territory environmental protection arrangements, and provides examples to support their arguments including:

- *Ministers are not obliged to provide (written) justification for ignoring environmental considerations before issuing approvals for developments.*

This seems particularly relevant because Ministers make decisions under the influence of developers, Ministerial colleagues and others, and generally have only limited environmental knowledge on which to base their decisions. As an example, the Mercorelia Court subdivision in Alice Springs in the mid-1990's was granted Ministerial approval despite a Development Consent Authority

¹⁷ Submission No. 17, Litchfield Shire Council, 2 April 2004

¹⁸ Submission No.18, Department of Infrastructure, Planning and Environment, 2 April 2004

recommendation against it. One of the issues of concern was the likely impact of salt on building foundations due to its location in the middle of Coolibah Swamp" Despite measures being put in place to mitigate this issue, significant concerns still remain that salt will impact on buildings, potentially exposing the government to expensive litigation. If a statutory EPA had been in place, then the Minister would have been obliged to provide transparent reasons why such a significant environmental issue was over-ridden, prior to his (currently non-appealable) decision to proceed.

The lack of rehabilitation funds for Mt Todd mine is another example of poorly planned decisions leaving significant environmental and economic costs for taxpayers and the community. A best-practice statutory EPA would have recommended mandatory rehabilitation bonds to be lodged before the project commenced, the responsible Minister would be obliged to act in accordance with these recommendations unless written, publicly available reasons are given for variations, and compliance would be monitored by the EPA.

- *The Minister for Environment & Heritage has (full) control over the constitution and role of the Environment and Heritage Division of DIPE¹⁹, with limited checks and balances on that power.*

This means the Minister can change the OEH constitution without any parliamentary or public scrutiny. It also leaves OEH vulnerable to inappropriate directions by the Minister on particular issues. Therefore OEH is far from an 'independent watchdog' on environmental issues, eroding public faith in its role.

In its favour, the creation of a separate Ministry for Environment & Heritage overseeing OEH has removed the obvious conflict of interest that previously existed where the same Minister (Vatskalis) was responsible for all DIPE divisions including OEH.

The OEH is not a statutory body and hence is not independently accountable to parliament via annual reporting requirements. It is therefore difficult for the government and community to assess whether it is meeting its environmental protection responsibilities.

Government agencies can be both the proponent of projects and the regulator of subsequent environmental compliance conditions, setting up a potential conflict of interest.

The Department of Business, Industry and Resource Development is an example of this with respect to mining proposals. DBIRD works cooperatively with mining companies to assist their exploration for economically mineable deposits. This often results in a close working relationship. Once a deposit is proved viable, the level of environmental assessment is jointly decided by OEH and DBIRD, and then draft EIS guidelines are set by OEH, circulated for public comments then given to the mining company to address queries and

¹⁹ The Environment and Heritage Division of DIPE is a pseudo-EPA for the NT at present.

concerns, for final review by OEH. Recommendations for operating conditions are then compiled by OEH and passed to the Environment Minister. The Minister has the legal right to amend the operating condition recommendations before passing them to the Mining Minister, DBIRD and the proponent. DBIRD then monitors compliance, creating a potential conflict of interest where the agency that has worked closely with the mining company to establish the mine is the regulator. An independent EPA would alleviate any potential conflict of interest and increase public confidence in the process.

ALEC has been told that pastoralists who have illegally cleared land have been granted retrospective permission for this clearing by the Pastoral Land Board. If true, this is a clear case of the regulating agency being too close to the proponent.

- There is inadequate formal public input to government policies and directions on environmental protection.

As an example, the current development consent and environmental impact processes have limited community input. There are limited mechanisms to enhance the community's expertise or to capture local knowledge in this area. The EIS process would benefit from a DCA-like panel of community review.

- There are significant gaps in environmental protection tools (e.g. no State of the Environment Report).

For example, diffuse sub-optimal land management practices on pastoral and aboriginal land in central Australia are resulting in a slow decline of biodiversity values. It is a 'death by a thousand cuts'. The development of environmental protection tools such as financial incentives to protect and enhance the biodiversity of these lands would benefit all parties. An EPA would be perfectly placed to coordinate and grow such schemes, monitor the outcomes and refine them over time.²⁰

As another example, private land developers in central Australia are given very little assistance to develop best-practice energy and water management systems for their proposed subdivisions. The current White Gums subdivision proposal is a clear example of this where the effluent management system is least-cost (to the developer) rather than best practice (for the community) and is likely to result in off-site pollution and no meaningful substitution of effluent for potable water.

Lack of economic tools such as trading schemes or pollutant discharges to air and water will place NT businesses at an economic disadvantage in coming years compared to interstate enterprises. An EPA can develop such incentive programs in conjunction with industry and can then monitor compliance with the schemes.

²⁰ Several pastoral properties in central Australia have recently commenced an Environmental Management System program to improve environmental outcomes and financial returns.

The lack of a regular State of the Environment report for the NT is also a critical missing tool, as it provides locally-appropriate benchmark information on the existing condition of areas, the main pressures affecting them and appropriate or existing management responses.

- *There is inadequate resourcing of EPA-like functions in Central Australia.*

OEH has only one employee in central Australia with a focus on environmental issues He is only able to react to day-to-day issues and queries rather than develop a consistent and strategic process to progressing local outcomes. ALEC understands there are around 22 employees of OEH, and it would seem reasonable to expect that more than one staff member be based in central Australia.

If an independent EPA is established across the NT, then its central Australian operation should be well resourced. This not only relates to on-ground staff, but also to administrative requirements such as offices, phones, vehicles, etc. If these resources are not forthcoming, then operational staff should be housed as discrete entities within existing government agencies so they can access full administrative support.

Additional funding for EPA functions should not be at the expense of existing environmental programs in DIPE or other government departments.

- *Lack of expertise, poor agency commitment and inadequate legislation are resulting in poor enforcement outcomes.*

For example, no prosecution occurred for the cyanide spill on the Tanami Road in March 2002 despite clear evidence of deliberate dumping by the truck driver. Police and Worksafe staff conducted the investigation with no experience in environmental assessment procedures and so a clever solicitor was able to discredit the process. This would not happen if experienced EPA staff were in charge of investigations.

ALEC has been told that pastoralists who have illegally cleared land have been granted retrospective permission for this clearing by the Pastoral Land Board. If true, this is a clear case of the regulating agency being too close to the proponent.

There have only been two environmental pollution prosecutions in central Australia in 10 years - the BP and Shell fuel depot leaks in Alice Springs in the mid-1 990s.

Waste oil management remains an issue with haphazard stockpiles of full 44-gallon drums at the old abattoir site at the end of Smith St in Alice Springs.

- *The cumulative impact of numerous small developments are not assessed or regulated for their impact on a broad scale.*

For example, land clearing, seeding of buffel grass and bore establishment by pastoralists in central Australia is having a substantial impact on biodiversity yet is not managed by any overarching regional plan underpinned by good science. The Pastoral Land Board rarely denies permission for pastoralists to clear land. At Alcoota Station, permission was recently granted for the clearing of land and deliberate seeding with buffel grass despite a widespread understanding by government agencies and the community that the rampant spread of buffel grass has resulted in massive fires and significant biodiversity declines on pastoral properties, national parks and aboriginal land in recent years. A best-practice EPA would have the scope and resources to assess these cumulative impacts and develop policies that control such activities (such as a moratorium on seeding buffel grass until its biodiversity impacts are better understood).

- *There is inadequate education and training of communities and businesses on optimizing environmental outcomes.*

A vigorous scheme would provide the ability and attitudes for these sectors to solve many of their own issues. For example, a campaign to educate Alice Springs homeowners on salt importation to the town's soils via over watering of gardens would reduce the impact of this pressing issue on building foundations. An EPA with a broad charter would be able to coordinate education and training programs of various government agencies.²¹

In the opinion of the Department of Health and Community Services:

Establishing a separate, independent authority to manage environmental protection in the NT would be beneficial in so far as it would provide the appearance of independence from the government. Though from the perspective of the Environmental Health Program their contribution to draft environmental impact statements and public environmental reports would probably remain the same even if an EPA was to be established. Bringing all the legislation that is concerned with environment protection under one agency whether it is independent or otherwise of government, would be beneficial in that it would help to create a 'one stop shop' for the public.²²

From Charles Darwin University, the Committee received the comment that:

A comprehensive, visible and effective mechanism to strengthen environment protection administration in the Northern Territory would send a clear message to the Territory community and the Territory's broader stakeholders across Australia that the Territory economy has come of age, This would be achieved through demonstrating a strong Territory commitment to sustaining healthy environments; valued for their cultural and biological heritage, and valuable in the way they underpin economic prosperity.²³

²¹ Submission No. 15, Arid Lands Environment Centre, 1 April and 3 June 2004

²² Submission No. 20, Department of Health and Community Services, 2 April 2004

²³ Submission No. 23, Charles Darwin University, 30 March 2004

The Committee received the following comment from the Information Commissioner:

Establishing an adequately-resourced, independent agency is perhaps the best way to ensure community recognition of the priority given to environmental protection. An EPA can be seen as a driving force for environmental protection. This is not to say that it should be seen as promoting protection of the environment "at all costs". Its aim should be to find an appropriate balance between environmental concerns and other community and private interests.²⁴

Adding further that the:

Creation of an independent agency sends a clear message to the regulators, to those who are regulated, and to the community, about the goals of the government and the agency. It also makes the job of assessing the performance of the agency easier because its goals can be developed and pursued without the dilution of purpose that can occur as part of a larger organisation.²⁵

A combined submission from six environment groups; the Environment Centre of the Northern Territory, Australian Conservation Foundation, Threatened Species Network, World Wide Fund for Nature, Australian Marine Conservation Society and the Environmental Defender's Office (NT) argued in favour of an EPA in the Northern Territory identifying eight key reasons for their point of view:

The Northern Territory needs an EPA because:

- 1. It is the responsibility of government, on behalf of the community, to ensure that the environmental challenges the NT faces are fully, transparently and effectively addressed.*
- 2. This requires a high level body which has the standing and authority to provide strong leadership in setting environmental standards and improving environmental performance and outcomes across government, industry and the community.*
- 3. In order to retain public confidence in environmental protection measures, a suitably resourced body with a high degree of statutory independence, transparency and accountability is required.*
- 4. Responsible development, including the major industrialisation process currently underway, requires high level, strategically integrated environmental planning; detailed independent assessment and reporting; and diligent monitoring and auditing to ensure compliance with environmental obligations.*
- 5. Due to a combination of rising public expectations, changing obligations at a national and international level, and increasing industrialisation pressures, any responsible environmental protection body in the NT faces an increasingly large and complex work load, requiring significantly enhanced capabilities.*

²⁴ Submission No. 24, Office of the Information Commissioner Northern Territory, 6 April 2004

²⁵ Submission No. 24, Office of the Information Commissioner Northern Territory, 6 April 2004

6. *The existing serious environmental threats and degrading processes, including unsustainable or inadequately managed resource use in both terrestrial and marine environments; increasing waste and pollution issues; and broadscale problems arising from introduced invasive species, changed fire regimes and climate change, collectively require sophisticated and integrated whole-of-government responses, which in turn requires leadership from within government.*
7. *Governments promoting large scale development need access to advice that is reliable, comprehensive and precautionary.*
8. *The current process of implementation, management and review of legislation that has an environmental protection element is spread across many government agencies. As a consequence the environmental protection measures incorporated in pieces of legislation do not receive comprehensive and co-ordinated audit and assessment at review times. Nor do the disparate environmental protection measures enjoy the prominence or support and enforcement that they warrant. The core business of these agencies is not environmental protection and so this element of the legislation is overlooked or downplayed. Only a dedicated EPA can provide this comprehensive and integrated approach to environmental management and protection.²⁶*

The combined submission of six environment groups provided the Committee with some environmental statistics to support their arguments in favour of establishing an EPA in the Northern Territory including:

- *The southern arid section of the NT has already lost, to our knowledge, 40% of its native mammal species.*
- *The Northern Territory now has 72 native plant species, 9 fish species, 15 bird species and 21 mammal species on its threatened species list and further extinction from amongst these listed species must be likely.*
- *Introduced species, including dozens of exotic mammal, insect and plant species, are having a pervasive degrading impact across most of the NT. Despite the damage caused by such species, NT law still permits the introduction of new and potentially serious invasive species eg. for pastoral use.*
- *According to the government, planned new gas-related industrialisation developments in the NT are likely to increase the Territory's annual greenhouse gas pollution by almost 100% , (and this is likely to be an underestimate).²⁷*

The NT Greens argued in favour of establishing an EPA in the Northern Territory for several reasons including the following:

Inadequacy of current regime of environmental protection in the face of the complexity of existing impacts and the scale of growing threats to our shared natural environment.

²⁶ Submission No. 30, Six Environment Groups Combined, 11 June 2004

²⁷ Submission No. 30, Six Environment Groups Combined, 11 June 2004

In the case of the OE&H, this inadequacy is not only in terms of resourcing - by measures of budget, expertise, and regulatory power - but also in terms of structural integrity: constitution, independence, accountability, transparency.²⁸

From the Department of Business, Industry and Resource Development (DBIRD), the Committee received comment that:

Currently Northern Territory government agencies with statutory responsibility for environmental management potentially develop environmental management policy independent of each other. This may result in an inconsistent approach to environmental management across the jurisdiction. A centralised agency such as an EPA could develop and provide consistent policy direction for environmental protection objectives in the Northern Territory. The centralised agency responsible for environmental policy development could also be custodian of, and administer formalised environmental assessment of proposals, which trigger the EAA.²⁹

Save Darwin Harbour Group argued that:

- 1. Given the current and prospective rapid economic development in the areas of mining, oil and gas production and processing, transport and communications and agriculture in the Northern Territory, the establishment of a permanent, independent, environmental watchdog is of paramount importance to Territorians.*
- 2. While all other states and territories in Australia, and the majority of democratic states throughout the world, have environmental safeguards assured by the existence of an independent environmental monitoring body, we in the Northern Territory of Australia stand out as an anomaly in our lack of such a body.*
- 3. the future of development projects of all types in the Northern Territory ranging, for example, from inner city building developments, remote agriculture and fisheries projects, oil and gas industry developments and many more varied projects of all sizes planned for the Territory, makes environmental sustainability an issue of great importance.³⁰*

2.3 ARGUMENTS AGAINST

The arguments against establishing an EPA in the Northern Territory include:

- An EPA will create more bureaucratic processes for industry and business.
- There is a potential to slow down or disrupt future investments and developments essential to the Territory's future prosperity, regardless of whether proponents may have met all the relevant legislative requirements.

²⁸ Submission No. 32, NT Greens, 11 June 2004

²⁹ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

³⁰ Submission No. 2, Save Darwin Harbour Group, 24 February 2004

- An EPA may be too legislatively complex.
- An EPA will unnecessarily increase government spending to implement and maintain.
- Based on satisfaction with the current system of environmental protection, there is no real necessity as the existing system and measures are adequate.
- An EPA may not be the answer for improving the existing arrangements for environmental protection in the Northern Territory.

Mr Meaney submitted his opinion stating:

Further Bureaucracy is unneeded. There needs to be a broadening of WORK, HEALTH AND SAFETY to expand legislation for the prosecution of companies involved in the dumping and discharge of toxic waste. Like most rules, the Government has far too often folded. As with regards to the legislation requiring standards of quality of housing building standards, the requirement of highrise buildings to have underground carparking, and so forth, failure to enforce existing legislation has become a recurring theme.³¹

The Northern Territory Horticultural Association submitted that:

... if the government perceives there is need for an Environmental Protection Agency then the focus should be on improving, strengthening and empowering the existing departments currently responsible for environmental protection and ensuring these departments are adequately resourced to achieve the desired outcomes.

The NTHA believes that a partnership approach to addressing environmental issues and better communication between the various departments and stakeholders would be more beneficial than introducing another level of bureaucracy.³²

From the Northern Territory Cattlemen's Association:

The NTCA strongly opposes the establishment of any new body or Environmental Protection Authority that may inhibit development and future investment in the NT. There is already a disturbing trend of investors concerned with the NT Government's lack of vision for development in the NT.

The NTCA currently supports the arrangement in place, and managed by the Department of Infrastructure, Planning and Environment's Office of Environment and Heritage.

The Primary Industry sector (cattle industry) is in a mode of expansion with Land and Water being a major topic at present. NTCA believe that the OE&H provides adequate environment protection for any future industry development in the NT.

³¹ Submission No.1, Mr Sean Meaney, 17 February 2004

³² Submission No. 5, Northern Territory Horticultural Association, 16 March 2004

The OE&H, has over time, proven to be adequately managed, but under resourced, it may be appropriate to review the OE&H in regards to staffing and resource matters without resorting to a completely new body.³³

The Committee received the following comments from the Nhulunbuy Corporation:

In general, my only comment is that I do not believe that the Northern Territory needs to set up another bureaucratic structure as an individual Environmental Protection Agency.

I believe the Office of Environment and Heritage do more than an adequate job in these matters and if necessary this office could be slightly expanded if more environmental matters required consideration.³⁴

The Katherine Horticultural Association expressed a number of concerns regarding the creation of an EPA in the Northern Territory:

These centre around the additional expense which appears unavoidable with the establishment of another regulatory body. There is a strong feeling that appropriate laws and regulations already exist and that these should be implemented by competent, well resourced and unbiased staff of the relevant government department.

It is considered that any shortfalls in the existing legislative structure should be rectified in the normal manner.

Members were of the view that establishment of a separate and effective Environmental Protection Agency would require substantial resources. It was felt that these would be more effectively used within the existing structure of government in areas relating to environmental protection and the sustainable use of natural resources.

Further it was noted that horticultural producers are increasingly facing a situation where marketability of products is linked to acceptable environmental practices. Market forces as a mechanism for adopting appropriate and sustainable production practices are more effective and at no cost to government. Producers not conforming to increasingly stringent market standards will be ineligible to deliver to specific markets. Such a production and marketing environment will force producers to conform to environmentally sound production systems.

It is appreciated that the notion of establishment of an independent EPA, as might be found elsewhere, may be attractive. However it is considered that such an agency may by its very independence from government, become hostage to special interest groups and beyond control of the government and the electorate.

³³ Submission No. 8, Northern Territory Cattlemen's Association, 22 March 2004

³⁴ Submission No. 12, Nhulunbuy Corporation Ltd, 30 March 2004

The KHA also has particular concern as to the level of protection to be sought by a newly established Environmental Protection Agency, the detail of its charter and the bases on which it will interpret data and subsequently take action. From a horticultural perspective, complete protection implies no further development of “new” land. This will substantially reduce the scope for economic growth in those sectors which require a land base. Such a scenario will unavoidably restrict income generation and thereby reduce the capacity of the Northern Territory to independently resource local issues, whether these relate to service delivery or infrastructure.

The KHA is keen to work towards a situation where those uses of all environmental resources are truly sustainable. Maintenance of the character of the Northern Territory and further development of the economy demand this. There is however a grave concern that establishing an Environmental Protection Agency will siphon valuable resources away from existing agencies. This will itself create aggravation and disincentive and be a direct expense to government and to producers.³⁵

The Ministerial Advisory Committee on Aquaculture in the Northern Territory (MACANT) informed the Committee that:

Industry members on the Committee (MACANT) were unanimous in their opposition to the establishment of an EPA. They believed that their sectors had established their environmental bona fides by adoption of codes of practice, successful appraisal by major environmental studies and a movement toward adopting ISO 14001 in the barramundi and prawn farming sectors. They also endorsed the present mechanism for environmental management in the Northern Territory believing that it was operating very successfully.

The industry members expressed concerns that an EPA might increase bureaucratic impositions over and above the current comprehensive levels of environmental assessment, as well as being prone to manipulation by narrow, or political interests.³⁶

EcOz Environmental Services submitted that:

While EcOz sees the need for increased integration, transparency and independence, we are not advocating an EPA as there are several ways of satisfying the identified needs and have not investigated the pros and cons of EPAs compared with other models. It is also noted that most EPAs deal principally with pollution, environmental auditing etc, not necessarily with the environmental assessment process.³⁷

Darwin Port Corporation submitted that:

³⁵ Submission No. 14, Katherine Horticultural Association, 1 April 2004

³⁶ Submission No. 19, Ministerial Advisory Committee on Aquaculture in the Northern Territory, 1 April 2004

³⁷ Submission No. 21, EcOz Environmental Services, 2 April 2004

Given the sparse population of the Northern Territory and the fact that there is only limited development of the coastline outside Darwin Harbour, there seems little justification for the cost of setting up and running an Environmental Protection Agency in the Northern Territory.³⁸

The view of the Chamber of Commerce Northern Territory is that:

In assessing the current system against improved outcomes we believe that major changes to the current arrangements cannot be justified and indeed may reduce the current efficiencies at least in the short term. The Territory has an immature economy largely dependent on Government spending and the resource industry. To create a new Government agency at this point in the Territory's development will result in unnecessary costs to taxpayers and industry and deliver no identifiable lasting benefits.³⁹

Stating further that:

The Chamber is also concerned that such a regulatory body has the potential to slow down and disrupt future investments and developments essential to the Territory's future prosperity, despite the fact that these proponents may have met all the relevant legislative requirements.⁴⁰

The Northern Territory Horticultural Association opposes the establishment of an EPA in the Northern Territory stating:

It is the general consensus amongst members that departments and /or agencies responsible for environmental protection and sustainable development already exist. As part of fresh food management, an increasing number of Northern Territory Growers currently undertake audited programs that mandate environmentally sustainable farming practices.

The NTHA submits that if the government perceives there is need for such an agency then the focus should be on improving, strengthening and empowering the existing departments currently responsible for environmental protection and ensuring these departments are adequately resourced to achieve the desired outcomes.

The NTHA believes that a partnership approach to addressing environmental issues and better communication between the various departments and

³⁸ Submission No 22, Darwin Port Corporation, 5 April 2004

³⁹ Submission No. 29, Chamber of Commerce Northern Territory, 18 May 2004

⁴⁰ Submission No. 29, Chamber of Commerce Northern Territory, 18 May 2004

*stakeholders would be more beneficial than introducing another level of bureaucracy.*⁴¹

⁴¹ Cited in Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

Chapter 3 Current environmental protection arrangements in the Northern Territory

3.1. OVERVIEW

By inference rather dictate, the Terms of Reference for the inquiry required the Committee to consider the adequacy of the current environmental protection arrangements in the Northern Territory. Throughout its inquiries, the Committee's questions into the current arrangements for environmental protection focused primarily on whether an EPA would in fact improve upon the existing system. In general, evidence from business and industry indicated that while there was room for improvement, they were satisfied with the current system. Other submissions perceived certain conflicts and gaps to be present in the existing administrative arrangements.

Although not supportive of establishing an EPA in the Northern Territory, EcOz Environmental Services advocates improvements to the existing arrangements, identifying the need for:

- *greater statutory integration between water, soil, mineral, native vegetation protection;*
- *greater transparency of the environmental impact assessment process;*
- *more formalised procedures and policy development associated with water management;*
- *greater management of biodiversity particularly with regard to environmental impact assessment of large scale land clearing activities; and*
- *improved weed management objectives and procedures.*⁴²

Darwin Port Corporation submitted that:

*With policies and plans such as the "N.T. Marine and Coastal Management Policy" and "Darwin Harbour Regional Plan of Management" in place, the Corporation is of the opinion that the Government has a sufficient basis from which to monitor environmental protection. While the two examples given above are not specifically developed with environmental issues in mind, significant emphasis is placed on the sustainability of the environment.*⁴³

Charles Darwin University suggested that:

... it is possible that a comprehensive review, gap analysis and integration of all related legislation on environment protection is the first step, rather than the creation of a new agency with insufficient resources to undertake its operations. There have been many recent new developments in the Territory, and with the advent of the railway and the new agreements for oil and gas, there will be many more new developments over the next decade. Surely this

⁴² Submission No. 21, EcOz Environmental Services, 2 April 2004

⁴³ Submission No. 22, Darwin Port Corporation, 5 April 2004

*represents strong justification to visit existing environment protection legislation and map it against our known future needs against a context of agreed basic principles.*⁴⁴

The Northern Territory Minerals Council commented on the ever-changing social and political climate in which their industry operates. While not advocating the creation of an EPA in the Northern Territory, the Council asserts its place and willingness to assist with deriving solutions within that change, stating:

*The resource industry understands the changing social and political environment in which it operates and responds to changing community expectations. Establishing a new Government agency will not address these issues or lead to improvements in the Government's capacity to manage industry's short and long-term environmental performance. Having said that, the Minerals Council will work with Government and others on the problems that are perceived and with an open mind come up with the best solutions for all concerned.*⁴⁵

The combined submission of six environmental groups provided their assessment of the current arrangements focusing on the Office of Environment and Heritage (OEH) as the principal environmental regulator. The submission's criticism of the existing arrangement with regard to the OEH includes:

- *The OEH has no formal statutory basis. This means that it can be altered or disbanded at any time by mere executive action. There need not be any parliamentary or public scrutiny of any changes to the constitution of the OEH, or indeed any scrutiny of a decision to dissolve it altogether.*
- *The OEH does not have formal statutory functions. While it currently carries out the functions ... these functions can be amended at any time by mere executive action taken without any legislative or public scrutiny. This means that the government bodies, industry and the community who depend upon the OEH to perform these functions would not have any input into how and why the functions should be changed ... there is no guarantee that anyone else would have the capacity or expertise to carry out those functions.*
- *Lack of accountability and independence and potential conflicts of interest ... the OEH does not have to produce its own separate annual report and is not independently accountable to parliament for its actions.*
- *... the OEH does not have a sufficiently independent source of funding.*⁴⁶

Given the number of submissions that identified a need for improving the current arrangements for environmental protection, the Committee is of the view that in the first instance and regardless of whether an EPA is to be established or not, a thorough assessment or review of the existing arrangements for environmental protection is imperative.

⁴⁴ Submission No.23, Charles Darwin University, 30 March 2004

⁴⁵ Submission No. 28, Northern Territory Minerals Council, 7 May 2004

⁴⁶ Submission No. 30, Six Environment Groups Combined, 11 June 2004

3.2 NORTHERN TERRITORY GOVERNMENT DEPARTMENTS

During the first stage of the inquiry, the Committee wrote to all Northern Territory Government agencies seeking a summary of their environmental protection and management functions including any related legislative and administrative responsibilities. A summary table of these responses is provided in Appendix 2.

Figure 3.1 below shows a schematic of the two major Northern Territory Government departments and their respective divisions, responsible for and associated with environmental protection in the Northern Territory.

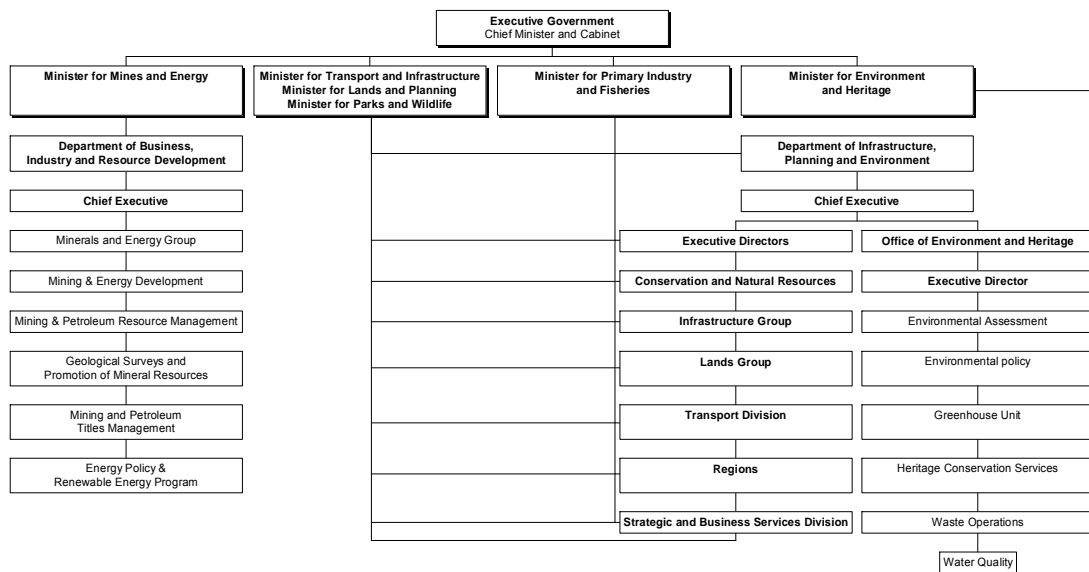


Figure 3.1: Northern Territory departmental divisions with major responsibility for and association with environmental protection⁴⁷

DBIRD informed the Committee that there are four principal pieces of environmental protection legislation in the Northern Territory, the *Environmental Assessment Act*, the *Waste Management and Pollution Control Act*, the *Water Act* and the *Environmental Offences and Penalties Act*. The submission from DBIRD provides an excellent summary of these pieces of legislation as well as others that affect mining and petroleum industries.⁴⁸

⁴⁷ Compiled from 2002-2003 Annual Reports, Department of Infrastructure, Planning and Environment and Department of Business, Industry and Resource Development

⁴⁸ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

3.2.1 Department of Infrastructure, Planning and Environment

3.2.1.1 Office of Environment and Heritage

A brief history of the development of administrative arrangements for environmental protection in the Northern Territory, from 1974 to the present is given in Submission No. 18 from the Department of Infrastructure, Planning and Environment (DIPE).

The creation of the Office of the Environment and Heritage in 2002 within DIPE, accountable to the agency's Chief Executive but reportable directly to the Minister for the Environment and Heritage; has created a certain level transparency and independence in the current environmental protection arrangements.

Primarily, the OEH is responsible for:

- Environmental impact assessment of all new development proposals;
- Environmental regulation of industrial and other polluting activities (excluding mining);
- Provision of advice and participation in inter-governmental negotiations on national, international and Commonwealth environmental issues affecting the Northern Territory;
- Heritage conservation and protection services; and
- Greenhouse matters and policies on a whole-of-Government basis.

A detailed list of the functions of OEH, distinguished between 'Environment Protection Services', 'Heritage Conservation Services' and 'Greenhouse Policy', is given in Attachment A of Submission No. 18 from DIPE.

The OEH is responsible for administering the:

- *Environmental Assessment Act*;
- *Waste Management and Pollution Control Act*;
- *National Environment Protection Council (Northern Territory) Act*;
- *Ozone Protection Act*;
- *Environmental Offences and Penalties Act*;
- *Heritage Conservation Act*; and
- *National Trust (Northern Territory) Act*.

3.3 DEPARTMENT OF BUSINESS, INDUSTRY AND RESOURCE DEVELOPMENT

The Department of Business, Industry and Resource Development (DBIRD) is the principal agency responsible for managing programs for development in the minerals, petroleum, pastoral, agricultural, horticultural, fishing, manufacturing and service sectors in the Northern Territory. A detailed explanation of DBIRD's environmental protection and management functions, including details of legislation for which DBIRD has administering responsibility, is provided in Volume 2 of the report.

DBIRD administers the following environment protection relevant legislation:

- *Agricultural and Veterinary Chemicals (NT) Act*
- *Biological Control Act*
- *Energy Pipelines Act & Regulations*
- *Fisheries Act & Regulations*
- *Mining Management Act*
- *Mining Act*
- *Mt Todd Agreement Ratification Act*
- *Petroleum Act*
- *Petroleum (Prospecting & Mining) Act*
- *Northern Territory Petroleum (Submerged Lands) Act*
- *Commonwealth Petroleum (Submerged Lands) Act and Regulations (Commonwealth legislation administered by the Northern Territory on behalf of the Commonwealth)*
- *Plant Diseases Control Act*
- *Stock Diseases Act*
- *Stock Routes and Travelling Stock Act*

The Committee was informed of proposed legislation with relevance to environmental protection, intended to be administered by DBIRD. These are the:

- *Biological Resources Act*
- *Plant Health Act*
- *Veterinary Chemicals (Control of Use) Act*.⁴⁹

The Committee was also informed of an existing inter-departmental agreement for co-operation between DBIRD and DIPE with procedures for implementing environmental assessment of mining proposals in the Northern Territory, including Territory Parks and Reserves.⁵⁰ As DIPE is the administering agency for the *Environmental Assessment Act*, this inter-departmental agreement ensures from the outset of a mine proposal lodgement, that environmental impact assessment considerations are very carefully considered by both agencies as well as the proponent.

DBIRD's submission advised the Committee that:

*MOUs already exist between Northern Territory Government agencies. If an EPA is to be established in the NT, it is suggested that the existing MOUs between government agencies, which relate to environmental management responsibilities, be reviewed.*⁵¹

⁴⁹ 5 February 2004, Correspondence from Mr Peter Blake, (then) Chief Executive, Department of Business, Industry and Resource Development, in response to Committee request for information

⁵⁰ 5 February 2004, Correspondence from Mr Peter Blake, (then) Chief Executive, Department of Business, Industry and Resource Development, in response to Committee request for information

⁵¹ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

Government is currently reviewing the *Mining Act* and relevant subordinate legislation, with an envisaged outcome of achieving:

*... an effective operating framework within which people are able to explore and undertake mining activities that utilises the mineral wealth of the Northern Territory and contributes to economic growth and well of all Territorians.*⁵²

A discussion paper released in October 2004 is the starting point of the review process from which the consultative phases commence, including invitation for submissions from all stakeholders. The discussion paper outlines the many specific issues to be addressed, including the identification of social and environmental matters that impact on the mining industry.⁵³

The *Mining Act* deals primarily with the administration and regulation of exploration and mining titles. It is a function of the *Mining Management Act* to regulate environmental protection of all mining sites and mining activities (unless deemed exempt by the Minister for Mines and Energy following consultation with the equivalent Commonwealth Minister).

Of particular relevance to this inquiry into the efficacy of establishing an environmental protection agency in the Northern Territory are the following objectives of the review of the Northern Territory *Mining Act*:

- examining the interface of the Mining Act and the Mining Management Act and identifying any discrepancies;
- taking account of new or emerging trends or issues in mining regulations and administration;
- examining alternative regulatory frameworks, including the possibility of a non-legislative response;
- assessing the impact of other relevant Commonwealth or Northern Territory legislation on the Mining Act, including the interaction of the Mining Act with the Aboriginal Land Rights Act and the Native Title Act;
- taking into account the impact of current and emerging world trends and developments that affect the mining industry in the Northern Territory.⁵⁴

In addition to the stated objectives, the discussion paper also notes that there are other important factors that warrant consideration in the review. These include:

⁵² DBIRD Website, Discussion Paper, Northern Territory *Mining Act* Review, October 2004, http://kakadu.nt.gov.au/pls/portal30/docs/FOLDER/DBIRD_ME/NEWS/MEDIA_RELEASES/DISCUSSIONPAPERINCLCONTENTS.PDF, Accessed 18 November 2004

⁵³ DBIRD Website, Discussion Paper, Northern Territory *Mining Act* Review, October 2004, http://kakadu.nt.gov.au/pls/portal30/docs/FOLDER/DBIRD_ME/NEWS/MEDIA_RELEASES/DISCUSSIONPAPERINCLCONTENTS.PDF, Accessed 18 November 2004

⁵⁴ DBIRD Website, Discussion Paper, Northern Territory *Mining Act* Review, October 2004, http://kakadu.nt.gov.au/pls/portal30/docs/FOLDER/DBIRD_ME/NEWS/MEDIA_RELEASES/DISCUSSIONPAPERINCLCONTENTS.PDF, Accessed 18 November 2004

- *Recent amendments to the Mining Act due to the National Competition Policy Review;*
- *Negotiation in respect of parks in the Northern Territory has the potential to impact on exploration and mining, as does the possible formation of an Environment Protection Agency;*
- *Financial aspects of the Act, such as provisions requiring securities to be set in certain circumstances, the use of bank guarantees and management of the Mining Trust Fund also requires review;*
- *Competitive advantage with other jurisdictions; and*
- *The enactment of the Mining Management Act.⁵⁵*

The Committee is of the view that any consideration of reform to the existing Northern Territory environmental protection measures must be considered in conjunction with the objectives of the review of the *Mining Act* and in light of any outcomes.

3.3.1 Minerals and Energy Group

The responsibility of promoting the development of the Territory's mining and energy resource industries as well as regulating the health, safety and environmental practices in these industries, lies with the Minerals and Energy Group of DBIRD.⁵⁶

The Minerals and Energy Group is responsible for:

- Mining and energy industry development, including indigenous support services;
- Energy policy and renewable energy program development;
- Mining and petroleum resource management;
- Geological surveys and promotion of the Territory's mineral resources; and
- Mining and petroleum titles management.

The Northern Territory Minerals Council submitted a summary of the current regulatory requirements for mining as well as the non-statutory commitments made by industry:

Statutory Requirements

The main statutory requirements for the minerals industry in the area of environmental assessment and regulation in the Territory are as follows.

Mining Management Act and Regulations

The Mining Management Act (2001) came into force on 1st January 2002 and applies to all mining, extractive, quarries and exploration licence areas in the

⁵⁵ DBIRD Website, Discussion Paper, Northern Territory *Mining Act* Review, October 2004, http://kakadu.nt.gov.au/pls/portal30/docs/FOLDER/DBIRD_ME/NEWS/MEDIA_RELEASES/DISCUSSIONPAPERINCLCONTENTS.PDF, Accessed 18 November 2004

⁵⁶ 2002-2003, Annual Report, Department of Business, Industry and Resource Development, http://kakadu.nt.gov.au/pls/portal30/docs/FOLDER/DBIRD/PUBLICATIONS/ANNUAL_REPORTS/ANNUAL_REPORT_0203/DBIRD_AR03WEB.PDF, Accessed 7 September 2004

Territory. Compliance with this legislation is usually through an ongoing integrated approach to all business management activities on a project or site including environment, health and safety. Authorisations to operate are issued to companies in accordance with the requirements of this Act.

Environmental Assessment Act (1982)

The Environmental Assessment Act (1982) and the Environmental; Assessment Administrative Procedures (1984) under which the Act is implemented, form the basis of the Territory environmental; assessment processes. The primary purpose of the assessment process is to provide for appropriate examination of proposed new projects and significant changes to existing projects that may cause significant environmental impact.

Water Act (1992)

A water extraction licence under the provisions of the Water Act applies to the use of groundwater as a water supply. The licence requires regular reporting of aquifer status.

A wastewater discharge licence is granted under the provisions of the Act usually after the declaration of a beneficial use of the recipient water body.

Waste Management and Pollution Control Act (1999)

The Waste Management and Pollution Control came into force on 1st February 1999. While the Act does not apply to mineral leases and exploration tenements, it covers all associated activities of the minerals industry off-lease.

Environmental Offences and Penalties Act (1996)

This Act establishes penalties for certain offences relating to the protection of the environment, and for related purposes.

Other legislation of note covering areas of the industry includes petroleum, pipelines, dangerous goods, weeds, heritage, sacred sites and heritage, parks and wildlife and conservation.

Non-Statutory Commitments by Industry

The minerals industry in the Territory's approach to environmental management is governed by an overriding global focus on sustainability, which includes continuous improvement of performance, strengthening relationships and partnerships and demonstrating integrity and commitment.

In the Territory, many of the resident companies have adopted a number of initiatives to support the global sustainability commitment. These include:

- *All major operators have environmental health and safety policies that advocates excellence in environmental performance through continuous improvement of awareness, understanding and performance. These policies frequently form the cornerstone of a company's management system*
- *Certification to ISO 14001, an internationally recognised standard for environmental management systems. The Ranger and GEMCO mines have achieved this status and Alcan Gove is currently awaiting official notification following a successful certification audit. Achieving ISO 14001 usually takes up to three years of solid work and commitment by a company.*
- *Companies are signatories to the Australian Government's Greenhouse Challenge Programme, which involves submission of annual reports to the Australian Greenhouse office on performance against emission targets.*
- *Annual public reporting on the environmental, health and safety performance of operations.*
- *All major operators in the Territory are signatories to the Minerals Industry Code for Environmental management. Key components of the Code include a requirement to publish an environmental report each year, to report annually on compliance to the Code, and to conduct three-yearly independent audits on compliance to the Code.*
- *All Territory operators and explorers subscribe to the NT Minerals Council (Inc.) Code of Conduct for Mineral Explorers in the Northern Territory of Australia. This Code was prepared to promote best practice in the Territory by exploration companies regardless of size of operation. In developing the Code, full and proper discussions occurred with the Government's Minerals and Energy Group, the Office of Environment and Heritage and the NT Cattleman's Association*
- *For the past five years, the Minerals Council has organised an annual environmental workshop for industry, Government and non-government organisations. The workshop is the pre-eminent event for face-to-face exchange of information on environmental management in the minerals industry in the Territory. An indication of the esteem, in which the workshop is held by Government is the fact that, typically, around 25% of delegates are from the NT Government, Commonwealth agencies and research institutions. Government also provides speakers.*
- *All companies have strong community partnerships and are a component of the expectations and requirements for environmental management. As a part of the community, regional mining operations understand the need for communities and traditional owners to benefit from industry, which is at an acceptable standard of environmental management.⁵⁷*

3.4 DEVELOPMENT CONSENT AUTHORITY

Established under Section 82 of the *Planning Act 2003* the Development Consent Authority (DCA) is responsible for determining development applications within their division area. Outside of these areas, the consent authority is the Minister for

⁵⁷ Submission No. 28, Northern Territory Minerals Council, 7 May 2004

Planning. The DCA is subject to the direction of the Minister generally; or in respect of a particular matter, including a development application.⁵⁸

Under Section 46 of the *Planning Act 2003*, if an environmental report or impact statement has been prepared or is required under the *Environmental Assessment Act* in relation to the proposed development, a development application must contain a copy of that report or statement and the results of any assessment of the report or statement, under that *Environmental Assessment Act* by the Minister.⁵⁹

Currently there are 7 division areas, generally representative of the larger population centres, Alice Springs, Batchelor, Darwin, Katherine, Litchfield, Palmerston and Tennant Creek.⁶⁰

The DCA also has a role in conducting hearings in relation to Northern Territory Planning Scheme amendments and providing reports to the Minister.

The Lands and Mining Tribunal hear any appeals against Development Consent Authority decisions regarding permits. Appeals are only acceptable from the proponent. Appeals can not be made on a determination or part of a determination that is made in accordance with the direction of the Minister for Planning under section 85 of the *Planning Act 2003*.

3.5 COMMONWEALTH DEPARTMENT OF ENVIRONMENT AND HERITAGE

Under the provisions of the *Environment Protection and Biodiversity Conservation Act, 1999* (Cth) (*EPBC Act*), any development proposal in the Northern Territory that potentially affects a matter of national environmental significance, activates the *EPBC Act* and therefore must satisfy the Commonwealth's environmental impact assessment requirements and be approved by the Commonwealth Minister for Environment and Heritage.

Matters of national environmental significance includes potential impacts on World Heritage Areas, RAMSAR listed wetlands, nuclear actions, marine areas controlled by the Commonwealth, listed migratory species and listed threatened species and ecological communities.⁶¹

⁵⁸ Northern Territory *Planning Act*, As in force at 18 March 2003, <http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/8380e29451c0c19569256cf2007caac0?OpenDocument#84.%20Functions%20and%20powers%20of%20Devel>, Accessed 26 October 2004

⁵⁹ Northern Territory *Planning Act*, As in force at 18 March 2003, <http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/8380e29451c0c19569256cf2007caac0?OpenDocument#84.%20Functions%20and%20powers%20of%20Devel>, Accessed 26 October 2004

⁶⁰ Development Consent Authority Webpage, within Department of Infrastructure, Planning and Environment Website, <http://www.ipe.nt.gov.au/whatwedo/dca/index.html>, Accessed 26 October 2004

⁶¹ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

No Australian jurisdiction has concluded a bilateral agreement with the Commonwealth for accreditation of approval processes, therefore the Commonwealth Minister for Environment and Heritage retains approval powers for Northern Territory development proposals that trigger the *EPBC Act*. However, a bilateral agreement has been concluded between the Northern Territory Government and the Commonwealth, accrediting the Northern Territory environmental impact assessment process for Northern Territory development proposals that trigger the *EPBC Act*.⁶²

Mining and other development projects that trigger the *EPBC Act* are given preliminary assessment from relevant groups within DBIRD. In cases where projects meet referral criteria, the proponent must comply with the requirements of the legislation.⁶³

The Committee was also informed, in regard to the minerals industry that:

*There is growing area also of joint Commonwealth/Territory specification of standards and procedures: Water Quality Guidelines (ANZECC) and the Strategic Framework for Mine Closure (ANZMEC) being two prominent examples.*⁶⁴

The Committee was also informed by DBIRD that:

In some cases we already have multiple levels of environmental oversight. In the regulation of uranium mining in the Alligator Rivers Region, the high level of environmental sensitivity is addressed by ongoing Commonwealth involvement. Although DBIRD has day to day regulatory functions for uranium mining, the Commonwealth retains reserve powers. These are effectively exercised through a specifically-created 'watchdog' body, the Office of the Supervising Scientist (OSS). In addition to some research activities, which are unique to the group, OSS duplicates review of all proposals and activities undertaken by DBIRD at uranium mining and exploration sites.

In the future the Commonwealth may extend its environmental role into the petroleum sector. The National Offshore Petroleum Safety Authority (NOPSA) is to commence operating on 1 January 2005. The Commonwealth Statutory Authority assumes the role of industry regulator for offshore petroleum safety Australia wide.

*As part of the implementation, Australian jurisdictions agreed to review offshore petroleum environmental administration with a view to including environment regulation into NOPSA in the future.*⁶⁵

⁶² Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

⁶³ 5 February 2004, Correspondence from Mr Peter Blake, (then) Chief Executive, Department of Business, Industry and Resource Development, in response to Committee request for information

⁶⁴ Submission No. 28, Northern Territory Minerals Council, 7 May 2004

⁶⁵ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

Under the *EPBC Act*, all Northern Territory export fisheries are independently audited by the Commonwealth Department of Environment and Heritage. This is to ensure ecologically sustainable management. Requirements to report on specific environmental assessment criteria and upon assessment, agreed recommendations must be fulfilled to receive export certification of products under the *EPBC Act*.⁶⁶

⁶⁶ 5 February 2004, Correspondence from Mr Peter Blake, (then) Chief Executive, Department of Business, Industry and Resource Development, in response to Committee request for information

Chapter 4 Considerations and implications

4.1. OVERVIEW

The Committee's considerations into the possibility of establishing another body, small or large, within the existing arrangements for environmental protection raised many questions. Are the current arrangements inadequate or flawed? If so, can the creation of an EPA improve the situation? If so, where would an EPA sit in regards to the existing arrangements? Should an EPA be the over-arching body responsible for the administration of all of the Northern Territory's environmental protection legislation? Should an EPA be the principal environmental regulator in the Northern Territory? Should an EPA be responsible for environmental protection in mining matters? Should an EPA have a role in policy creation and or policy review? Who would an EPA be answerable to? What degree of independence can realistically be achieved?

One of the Committee's objectives was to consider a system that balances the protection of the environment with the interests of all community sectors. Of the many pertinent questions and issues addressed during the Committee's deliberations, the implications for the greater regime of environmental protection as well as business, industry and development featured prominently. Any potential implication is largely dependent on the role and form an EPA in the Northern Territory would take.

Community expectations, including those of government, industry and the community itself, call for transparency of process and the observance of principles of ecologically sustainable development. From DBIRD the Committee received the following comment:

Transparency is achieved by involving and informing stakeholders of the decision-making processes and sustainability is pursued by ensuring that resources and the environment are not unduly impacted for short-term gain, which in the longer term may become an impost on the community. Most supporters of the EPA concept recognise these attributes as being amongst key reasons for the establishment of such a body.⁶⁷

From the point of view of DBIRD, for the proponent seeking approval to develop:

The operation of the environmental approvals system is important to gain the confidence of proponents that the Northern Territory Government is capable of handling project proposals in a responsible, efficient and timely manner.⁶⁸

Therefore, it follows that:

⁶⁷ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

⁶⁸ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

*Co-ordination of the approvals process by a centralised government agency would assist in providing consistent advice on any issues related to the assessment process.*⁶⁹

The Northern Territory Police, Fire and Emergency Services the Committee commented that:

*The setting up of a dedicated Environmental Protection Authority (EPA) could raise public expectation of greater environmental monitoring, control and law enforcement regarding environmental offences. From a Police point of view, it would be a preferred position if such an agency were fully staffed with specialist personnel able to investigate and prepare cases for prosecution within that agency, rather than relying on police officers.*⁷⁰

DIPE pointed out that:

*All systems can have their deficiencies, whether this is due to inadequate legislation, inefficient practices, finite resources and so on, that may not necessarily be overcome by simply changing governance structures i.e. establishment of an EPA may not by itself improve the system in any measurable way.*⁷¹

The Committee is of the view that this inquiry examining the efficacy of establishing an EPA in the Northern Territory is a crucial step towards identifying any deficiencies and offering possible solutions that may strengthen and enhance the overall system of environmental protection in the Northern Territory.

4.2. SCOPE AND STRUCTURE CONSIDERATIONS

Many submissions spoke generally about the need for the Northern Territory to have a strong framework for environmental protection. For example the Northern Territory Police, Fire and Emergency Services stated:

*It is clear in our jurisdiction there is an identified need to provide a framework that properly encapsulates the relevant functions of such a body, namely the prevention, education and enforcement roles as they relate to pollution and site contamination, whether it be by way of deliberate disposal or an accidental spillage.*⁷²

Adding also that:

... any structure must be conducive to removing the identified impediments, in that it must provide a framework that satisfies the roles and functions required

⁶⁹ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

⁷⁰ 16 January 2004, Correspondence from Commissioner Paul White, Commissioner of Police and Chief Executive Officer, Fire and Emergency Services, in response to Committee request for information

⁷¹ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

⁷² Submission No. 27, Northern Territory Police, Fire and Emergency Services, 8 April 2004

*and is properly resourced with personnel who have the capacity and expertise to competently conduct necessary investigations.*⁷³

Many of the submissions received were very clear about the structure and extent an EPA's role in the total scheme of environmental protection in the Northern Territory should be. For example, the Amateur Fishermen's Association of the Northern Territory stating:

*Given the financial constraints of the NT it is our recommendation that a Board of Directors be established that is comprised of 4 non-executive directors plus the Executive Director or General Manager of the secretariat. The 4 Board members should be selected based on their specialist knowledge with the board being expertise based rather than political or advocacy based. An independent Chair of the Board should be appointed. The total number of Board members should not exceed 6.*⁷⁴

DIPE presented their opinion that:

The vast economic cost of poor environmental management resulting in lost production, reduced tourism revenue and costly rehabilitation works is clearly known from other states, and is adequate justification for resourcing a 'Rolls Royce model' EPA.

An EPA should have a broad focus to encompass not only the traditional regulation of environmentally related Acts, but also a broad spectrum of initiatives that allow the EPA to deliver world's best-practice outcomes for environmental protection and enhancement.

*As an overriding principle, an EPA should represent the interests of the NT's unique environment, not that of governments, businesses, interest groups or individuals.*⁷⁵

Charles Darwin University made five recommendations regarding the scope of an EPA in the Northern Territory:

It is recommended that the Government of the Northern Territory consolidates all legislation that addresses environmental protection, including

- (a) Environmental planning*
- (b) Pollution*
- (c) Water quality*
- (d) Land quality*
- (e) Air quality*
- (f) Eco-efficiency*
- (g) Noise*
- (h) Waste (avoidance and mitigation)*
- (i) Radiation*

⁷³ Submission No. 27, Northern Territory Police, Fire and Emergency Services, 8 April 2004

⁷⁴ Submission No. 26, Amateur Fishermen's Association, 8 April 2004

⁷⁵ Submission No. 15, Arid Lands Environment Centre, 1 April and 3 June 2004

1. *It is recommended that responsibility for administering all aspects the environmental protection legislation reside with one agency of Government only.*
2. *It is recommended that the environment protection portfolio reports directly to a single Minister*
3. *The resources allocated to the agency should reflect the tasks required in priority areas of environment protection, and the mechanism for allocating funds should be sufficiently flexible to respond to critical incidents if and when they occur.*
4. *The research and development activities associated with a strengthened environment protection capability should form a Schedule to the Partnership Agreement between Charles Darwin University and the Northern Territory Government. This strategy would:*
 - (a) *Uphold the Government's commitment to innovation in environment protection*
 - (b) *Through engendering strong collaboration between Government and University in the area of environmental protection, further consolidate the significant, but sometimes fragmented, capacity that already exists in the Northern Territory*
 - (c) *Assist in expanding an area of research strength that has the capacity to lever Commonwealth investment for research into the Territory.*
 - (d) *Ensure that experience of government and industry is captured and fed back to influence relevant teaching and research.⁷⁶*

Other submissions considered possible structures without clear favour of one model over another. For example from the Department of Health and Community Services, the Committee received:

In order to fully realise the potential benefits of an independent EPA the authority would need to be adequately resourced. Substantial change to the functions and structure of existing government departments would create confusion amongst the public and indeed staff. Change would need to be adequately managed and marketed to staff and the public, at a considerable cost. Rather than investing funds in the establishment of an EPA it can be argued that funds would be better directed to improving the resource base of existing agencies that deal with environmental protection. Currently under resourcing within the area of environment protection is impacting upon the ability of staff to ensure compliance with relevant legislation. Attention also needs to be focussed on improving communication between the agencies dealing with environmental protection to maximise environmental outcomes through the provision of the best specialist advice and to prevent duplication.⁷⁷

Also from Power and Water:

⁷⁶ Submission No. 23, Charles Darwin University, 30 March 2004

⁷⁷ Submission No. 20, Department of Health and Community Services, 2 April 2004

... for reasons of administrative efficiency, smaller jurisdictions in Australia tend to have their EPA embedded in, or closely allied to, a resource management and conservation department.⁷⁸

Other submissions asked the Committee to consider the implications of certain aspects of scope and structure. For example the Information Commissioner stated:

Having the body responsible for environmental protection as a part of a larger departmental structure can lead to apparent, and in some cases real, dilution of focus on environmental issues. There is a risk that both the organisations that are regulated and members of the community will view the inclusion in a broader structure as indicating a lower priority for environmental protection. If this perception grows, there is the potential for environmental protection to be seen as a low priority or 'low risk' area for businesses, making the job of the regulator even harder.⁷⁹

The submission from the Information Commissioner of the Northern Territory also raises the need for accountability and public participation to be contained within the statutory framework of an EPA in the Northern Territory, stating that:

Issues to be considered may include the extent to which:

- *the agency should consult members of the public in relation to its functions;*
- *members of the public and representatives of community groups can become involved at the management level, for example, on the board of the agency, or relevant subcommittees;*
- *members of the public and representatives of community groups can become involved in an advisory or technical capacity;*
- *provision for public notification and public hearings/proceedings can be appropriately included in relation to the functions of the agency;*
- *the agency should be required to publicly report on its functions, both generally and in specific cases.⁸⁰*

Adding further:

In terms of public participation, it is worth considering to what extent, if any, members of the public should be able to take action to protect the environment if they feel the EPA should be acting but is not. For example, should members of the community or community groups be able to commence prosecutions for environmental offences or take action to seek declarations or injunctions in respect of breaches of environmental laws? In

⁷⁸ Submission No. 25, Power and Water, 7 April 2004

⁷⁹ Submission No. 24, Office of the Information Commissioner, Northern Territory, 6 April 2004

⁸⁰ Submission No. 24, Office of the Information Commissioner Northern Territory, 6 April 2004

*that regard, should traditional notions requiring a litigant to show 'standing' before they can proceed in a court be altered or removed in relation to environmental offences?*⁸¹

The Amateur Fishermen's Association also stressed the importance of transparency stating:

*It is essential that the processes of the EPA are totally transparent and not influenced by political priorities or industry lobbying. A suite of policies and regulatory tools will need to be developed and this could be done through the establishment of an Advisory Group or Technical Working Group.*⁸²

Darwin City Council called for the consideration of the implications on the current planning arrangements stating:

*Effective environmental protection is not possible without thorough assessment of the implications of new development at the planning stage. It is for this reason that local government interstate carry most of the town planning responsibilities with the exception of very large industry/ commercial or community infrastructure projects of state significance. Given the current legislative town planning framework in the Northern Territory, significant changes and delegation of certain development assessment function to local government would be required to ensure the effective implementation of a EPA framework based on responsibility sharing.*⁸³

Many submissions recommended that independence be a key feature of an EPA in the Northern Territory, calling for an EPA that is independent in the advice that it gives and in the decisions that it makes.

The Arid Lands Environment Centre considers the importance of independence as a matter of good governance that addresses the conflict of Government as developer and Government as environmental regulator.⁸⁴ This is echoed in comments by the NT Greens on the perceived conflict of interest between the role of the OEH as policy maker and their responsibility for assessment. NT Greens cites the example of the recently proposed Glyde Point development to support their call for an independent EPA:

Consisting of five stages, to roll out over 30 years and encompassing an area over 4000 hectares, the industrial estate would require over 1,500 hectares of mangrove clearing and ocean reclamation. This area is quite obviously environmentally sensitive and valuable, encompassing diverse mangroves, vine rainforests, coral reefs and dugong feeding grounds. This is a massive proposal, with serious implications for biodiversity.

⁸¹ Submission No. 24, Office of the Information Commissioner Northern Territory, 6 April 2004

⁸² Submission No. 26, Amateur Fishermen's Association, 8 April 2004

⁸³ Submission No. 16, Darwin City Council, 2 April 2004

⁸⁴ Submission No. 15, Arid Lands Environment Centre, 1 April 2004 and 3 June 2004

It is significant to note that, while the public documents make vague reference to gas-related industry, there has been no commitment from any industry partners. The companies who plan to mine the fuel seem more interested in processing it on a floating platform, for transportation to more lucrative markets in the northern hemisphere. DIPE is making the indefensible proposal that we sacrifice our natural wealth in speculation that such a gesture will bring the big industry players on shore.⁸⁵

The submission from DIPE questioned the issue of independence by arguing:

The current calls by some members of the public for an EPA in the Northern Territory cite “independence” as the main justification. This implies an EPA that would be (more?) independent of Government. As indicated above, none of the EPAs and their Boards (where present) in the other Australian jurisdictions are truly “independent” of government, in the sense that they are all government appointed and funded and they report to government through the relevant Environment Minister. The day-to-day implementation of environmental protection legislation and policies is carried out by the relevant government agencies. However, the existence of some form of an independent body (board/council/committee) advising government on environmental matters, perhaps similar to the Northern Territory Heritage Advisory Council model, may satisfy the public calls for a more independent system of monitoring environmental protection services in the Northern Territory.⁸⁶

Further DIPE states:

None of the EPAs and their Boards (where present) are truly “independent” in the sense that they are all government appointed and funded and they report to government through the relevant Environment Minister.⁸⁷

The Northern Territory Minerals Council finds dubious the calls for greater independence in Northern Territory’s system of environmental protection stating:

Use of the word independent in this current debate is questionable. Independent is a politically charged and increasingly emotive term. It has been virtually emptied of meaning by the incessant and indiscriminate use of its perceived public and political leverage. In spite of its superficial appeal, use of the word denies examination of the more important and fundamental issue of environmental assessment and regulation in the Territory.⁸⁸

Katherine Horticultural Association cautions against too much independence stating:

⁸⁵ Submission No. 32, NT Greens, 11 June 2004

⁸⁶ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

⁸⁷ Submission No. 18 Department of Infrastructure, Planning and Environment, 2 April 2004

⁸⁸ Submission No. 28, Northern Territory Minerals Council, 7 May 2004

However it is considered that such an agency may by its very independence from government, become hostage to special interest groups and beyond control of the government and the electorate.⁸⁹

DBIRD identified number of problem issues associated with the implementation of an EPA or similar from the experience of other jurisdictions, cautioning the Northern Territory against making the same mistakes. These include the:

- *addition of another level of bureaucracy to government processes*
- *cost of establishing a new government department*
- *cost of re-educating the public, government and industry*
- *confusion in industry and public about who does what*
- *duplication and overlap between government departments*
- *competition between departments and portfolios*
- *industry becoming responsible to a number of departments rather than a single action department*
- *additional processes and time delays to developments⁹⁰*

4.2.1 Functions, Roles and Responsibilities

The combined submission from six environmental groups in the Northern Territory, are of the opinion that an EPA in the Northern Territory should undertake the following functions:

1. *Environmental planning*
2. *Environmental policy development*
3. *Environmental impact assessment*
4. *Monitoring*
5. *Enforcement*
6. *Provide a registry of information*
7. *Facilitate community consultation*
8. *Encourage voluntary initiatives*
9. *Design environmental economic instruments*
10. *Environmental Education*
11. *State of the Environment reporting*
12. *Audit other government institutions*
13. *Implement sustainability.⁹¹*

DBIRD discussed the issue of an EPA having regulatory powers, pointing out that:

One of the issues to be managed in having an EPA that has regulatory powers (irrespective of the structure of the EPA) is regulatory duplication. This can result in regulator competition or, in some situations, perception that the regulator may be attempting to avoid its responsibility.

⁸⁹ Submission No. 14, Katherine Horticultural Association, 1 April 2004

⁹⁰ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

⁹¹ Submission No. 30, Six Environment Groups Combined, 11 June 2004

Were industries to be universally subject to regulator competition it would be inevitable that any which were marginal economic performers may not be able to sustain the added impost of meeting more than necessarily stringent requirements, leading to otherwise unnecessary business failure. This is an outcome to be avoided for the Territory should an EPA with regulatory powers be established.⁹²

Further, DBIRD asked the Committee to consider that:

The areas of the DBIRD regulatory role that would be subsumed by an EPA would be those regulating environmental management. To remove environmental functions from the legislation for regulation by another agency would present transitional difficulties from an operational and administrative perspective. Persons within those agencies undertaking such roles often have other duties and cannot be readily transferred to create an EPA without serious disruption to other regulatory functions. Alternatively, recruitment and ongoing employment of suitably qualified and experienced people to an EPA may be costly and uncertain.⁹³

In regards to an EPA in the Northern Territory having a policy role, Mr Wallis, Assistant Director, Policy Co-ordination with WA EPA Service Unit advised:

And if you do nothing else, if the body you are going to establish has any sort of policy role, I think you really should make sure that you in-build some policy evaluation. It is really the forgotten bit of policy, and there are just some best practice principles that you need to do.⁹⁴

The combined submission from six environmental groups identified a need for an environmental appeals system other than the existing provision for appeals by a developer against a Development Consent Authority's decision on a development permit. This submission highlighted what the combined group feels is problematic about the current arrangement with appeals:

Implementing such an EPA would also require the introduction of an environmental appeals system to provide a check and balance on the EPA's decisions and ensure a robust environmental decision-making process generally. ...

- *The fundamental objective of an appeals system is to correct errors in the original decision. A developer-only appeals system means that only errors associated with a rejection of a development are corrected. Errors associated with the approval of a development are not. This defeats the purpose of the appeals.*

⁹² Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

⁹³ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

⁹⁴ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

- *A developer-only appeals system excludes parties who have a legitimate interest in environmental decisions. This undermines public confidence in environmental regulation.*
- *A developer-only system introduces bias into the decision-making process. Decision makers know that if they refuse an application they can be taken on appeal. In the absence of a countervailing right of appeal against the grant of an application, a bias is introduced into the system.⁹⁵*

The combined groups' submission advocates an appeals system that is open to appeals from both developers and those individuals and groups who can demonstrate a legitimate interest in the environmental protection of the area in question. The submission states that appeals should be applicable for:

- *EPA's decisions about whether to assess a proposal;*
- *EPA's decision about what level to assess a proposal at;*
- *EPA's report and recommendations about proposals; and*
- *Relevant agency/Minister's decisions about proposals.⁹⁶*

The following features and functions were listed by the NT Greens as their requirements for an EPA in the Northern Territory:

- *Environmental impact assessment;*
- *Other environmental assessment (including proposals which trigger less formal impact assessment and potential environmental impacts where a proposal has not be referred by another agency);*
- *Facilitating community consultation;*
- *Accountability mechanisms – appeals;*
- *Monitoring;*
- *Enforcement;*
- *Policy setting, development, co-ordination, monitoring and review;*
- *Environmental planning (regional, bio-regional, state-wide and national); and*
- *Reporting (periodic and public).⁹⁷*

From the perspective of the Northern Territory Police, Fire and Emergency Services:

... although it is envisaged that police will retain primacy for the investigation of criminal offences such as Chemical, Biological and Radioactive incidents (CBR), there is a legitimate need for a properly resourced agency that can adequately deal with environmental offences more generally, that relate to illegal disposal, improper transport/storage or conduct that has the potential to threaten community health, damage the environment or otherwise detract from the amenity of life for Territorians.⁹⁸

⁹⁵ Submission No. 30, Six Environment Groups Combined, 11 June 2004

⁹⁶ Submission No. 30, Six Environment Groups Combined, 11 June 2004

⁹⁷ Submission No. 32, NT Greens, 11 June 2004

⁹⁸ Submission No. 27, Police, Fire and Emergency Services, 8 April 2004

Power and Water stated that the functions an EPA in the Northern Territory should encompass:

Environmental impact assessment, waste management, pollution control, environmental policy and legislation formulation, and licensing of environmentally relevant activities such as those that could produce emissions to air, water and land.

Resource management functions such as heritage conservation and coastal zone planning and management may better reside in an allied department, and litter management could be devolved to local government bodies. This would provide a body with a greater focus on environmental protection.⁹⁹

The Arid Lands Environment Centre recommended that an EPA in the Northern Territory possess the following roles for it to be an effective and robust 'best-practice' EPA:

- *Reviewing and developing legislation, policies, goals, standards, guidelines, and codes of practice relevant to environmental protection.*
- *Monitoring and enforcing this operating framework.*
- *Environmental planning in conjunction with other government agencies and community bodies.*
- *Ensuring due recognition is given to the economic, social and environmental costs and benefits of environmental protection initiatives, both in proposed and existing developments.*
- *Conducting or commissioning scientific/economic research that allows fully-informed decision-making*
- *Coordinating education and training programs for people and businesses to protect, restore and enhance their environment.*
- *Assist other government agencies to optimise environmental outcomes within government (e.g. developing generic 'green office' policies for energy, water, paper and other office resources).¹⁰⁰*

DIPE questioned whether an EPA in the Northern Territory should have an advisory or approval role, stating:

EPAs in the other jurisdictions have varied roles. Most are advisory but in some jurisdictions the Minister can delegate his/her power to the EPA to approve items such as "Environmental Management Plans" on a case-by-case basis (WA) or to determine environment policies and strategic directions (NSW). In SA the Board can direct the Chief Executive of the EPA (a public servant).

In WA the operational relationship between the EPA and the Department of the Environment is subject to a formal Service Agreement as the EPA is supported by and is responsible for directing a dedicated staffing unit of public servants (the EPA Service Unit) housed within the Department. The staff

⁹⁹ Submission No. 25, Power and Water, 7 April 2004

¹⁰⁰ Submission No. 15, Arid Lands Environment Centre, 1 April and 3 June 2004

*within the EPA Service Unit also have obligations to the Director General of the Department and the Minister. In other jurisdictions the relationship is less complex and is generally through the CEO of the government environment agency.*¹⁰¹

In regards to environmental health, the Department of Health and Community Services submitted:

*Whilst the Environmental Health Unit of the DHCS undertakes some activities which in other states fall under the remit of an EPA, such as radiation protection, approval of septic tanks and nuisance prevention, the principle focus of the Environmental Health Unit is on protecting public health and safety. There is some concern that if such activities were to come under the Jurisdiction of an EPA that public health and safety concerns might not be adequately addressed since the principle focus would be environmental protection. In terms of radiation protection, in the future it is likely that radiation protection legislation will be administered by a national autonomous organisation due to the changing world scene particularly heightened terrorism activity.*¹⁰²

Charles Darwin University comments that:

*Incidents like the damage to nesting habitats of endangered species within the Mt Todd site, threats to the Edith River from acid drainage from the waste rock on the same site, and the contamination of a domestic water supply at Ranger, all illustrate the futility of segregating management issues across arbitrary boundaries.*¹⁰³

Adding further:

... several issues remain critical to the development of sustainable, clean, green and prosperous futures. They are the need for environment protection mechanisms that are:

- (a) Transparent*
- (b) Enforceable*
- (c) Inclusive of stakeholder collaboration*
- (d) Culturally responsible*
- (e) Environmentally responsible*
- (f) Founded on resource efficiency, and*
- (g) Facilitative for knowledge and information sharing*¹⁰⁴

Although an assessment of the Northern Territory environmental impact assessment process is technically not within the Terms of Reference of this inquiry, the NT Greens called for reform of the impact assessment process in the Northern Territory, to improve the current system by including the following:

¹⁰¹ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

¹⁰² Submission No. 20, Department of Health and Community Services, 2 April 2004

¹⁰³ Submission No. 23, Charles Darwin University, 30 March 2004

¹⁰⁴ Submission No. 23, Charles Darwin University, 30 March 2004

- *Improved scoping process;*
- *Option to call for public inquiry;*
- *Independent production of impact assessment;*
- *Improved public participation;*
- *Stronger focus on cultural and social impacts;*
- *Cumulative impacts;*
- *Free access to IA documents;*
- *Baseline data to be collected;*
- *Greater focus on alternatives and systems processes rather than cost-benefit analysis and risk assessment;*
- *Improving the science in impact assessment;*
- *Public participation in the screening process;*
- *Public should have the right to appeal EPA decisions;*
- *Public referral to EPA for EIS; and*
- *Schedule of designated development.*¹⁰⁵

Professor John Bailey Associate Professor of Environmental Assessment with Murdoch University, Western Australia raised some important issues regarding environmental impact assessment. Professor Bailey commented on the potential for bias of consultants employed to undertake environmental impact assessment on behalf of their clients and in their clients' best interests.¹⁰⁶ Professor Bailey also suggested the Committee explore the Ontario Class Assessment model in Canada.¹⁰⁷ In addition, Professor Bailey identified the need for industry accreditation of environmental consultants such as the certification scheme, which has only recently been launched by the Environment Institute of Australia and New Zealand and supported by the Commonwealth Department of Environment and Heritage.¹⁰⁸

The combined submission of six environmental groups devoted specific regard to environmental impact assessment, highlighting what the groups believe to be problems with the existing approach, including:

- *Lack of integration in the administration of environmental legislative instruments;*
- *Proposals not being referred to the Minister for Environment from other Government Departments due to insufficient environmental knowledge in those other agencies;*
- *A lack of independence in the fact that the Minister determines which proposals should be subject to the Environmental Assessment Act and the level of assessment required;*

¹⁰⁵ Darwin Public Hearing, NT Greens Presentation, 11 June 2004

¹⁰⁶ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 2, Meeting Notes, Professor John Bailey, Murdoch University 4 March 2004

¹⁰⁷ For further information please visit

http://www.ene.gov.on.ca/envision/env_reg/ea/english/General_info/What_are_Class_EAs.htm

¹⁰⁸ Environmental Institute of Australia and New Zealand Webpage, 2004, <http://www.eianz.org/certupdate.html>, Accessed 23 December 2004

- *Political bias in the environmental impact assessment decision-making process;*
- *Conflict of interest for the OEI being within DIPE when assessing projects of other divisions within DIPE; and*
- *Cumulative impacts of all of the development and land/sea management are not adequately addressed by individual environmental impact assessments which usually deal primarily with the impacts of the specific proposal.*¹⁰⁹

Further to the point stated above regarding proposals not being referred to the Minister for Environment by other agencies, NT Greens submitted:

Those agencies cannot be expected to encompass the same level of relevant environmental knowledge as could be found in an appropriately resourced EPA. As a result, proposals may not always be referred as appropriate.

This risk is just as significant for the consideration of proposals which do not require formal Environmental Impact Assessment but still have some environmental impact, and so demand some consideration regarding controls and conditions for environmental protection. Once again, the responsible Minister or agency may not have sufficient expertise to adequately consider these issues.

Even if we assume a level of expertise, assessment of cumulative impacts in relation to other developments and plans in the area is unlikely to fall within the Minister or agency's field of vision.

*When an agency has referred a proposal, the Minister sends any assessment report to the referring party, who decides whether or not to adopt the report. In this way, any such assessment may be ignored in the absence of any public accountability, and the proposal may well go ahead without any conditions that protect the environment.*¹¹⁰

Professor Bailey advised the Committee that:

*If EPA is concerned primarily with environmental governance, then it is easier for it to cross departmental silos.*¹¹¹

¹⁰⁹ Submission No. 30, Six Environment Groups Combined, 11 June 2004

¹¹⁰ Submission No. 32, NT Greens, 11 June 2004

¹¹¹ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 2, Meeting Notes, Professor John Bailey, Murdoch University 4 March 2004

DBIRD also touched on the issue of cumulative impacts stating:

In relation to resource development, for each major project there are a considerable number of smaller projects that do not trigger assessment under the EAA. In isolation, environmental impacts related to these activities may be of minor significance. When viewed as a group, the cumulative impacts may be significant and environmental risk increased. Whilst environmental management for these activities is the responsibility of the relevant agency, 'self assessment' and approval of activities may also be perceived as a potential problem from a stakeholder perspective. For example, one of the department's corporate objectives states: "We are committed to advancing and strengthening the Territory economy". It is possible to envisage a stakeholder perception that promoting the benefits of economic development could take precedence over environment management considerations.¹¹²

In relation to environmental regulation of mining, the Committee was informed by DIPE that:

In most jurisdictions, including the NT, environmental regulation of mining and petroleum activities rests with the relevant Mines agencies under mining statutes. NSW, Tasmania and Queensland are the exceptions. In these States environmental control of mining activities comes under the responsibility of the Environment Protection Authority (NSW), the Department of Primary Industries, Water and Environment (Tasmania) and the Environmental Protection Agency (Queensland). This arrangement has been in place in Tasmania since the 1970s and in Queensland since 1 January 2001.¹¹³

The NT Greens cited the example of the recent Federal Senate inquiry into the monitoring and reporting of Australia's uranium mines to support their call to address the perceived conflict of interest in the existing arrangements, stating:

For example, the recent Federal Senate inquiry into the monitoring and reporting of Australia's uranium mines identified in great detail a perceived conflict of interest between the dual roles of the Department of Business, Industry and Resource Development as both a promoter and regulator of uranium mining. The Department is the primary regulator of the Ranger Uranium Mine, which in its lifetime has suffered well over a hundred environmental incidents, with no prosecution. It is only with the recent scrutiny brought by a series of gross environmental management failures that the miner seems set to face their first prosecution for a breach of regulations. The Senate Committee report noted that:

'2.15 The DBIRD is responsible for the supervision of mining in the Territory as well as the regulation of mining's environmental impacts. Other States devolve environmental regulatory functions to a body, such as an

¹¹² Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

¹¹³ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

Environmental Protection Agency, which lessens the possibility of perceived and actual conflicts of interest'.¹¹⁴

DBIRD considered strategic resource planning in reference to a report entitled 'Review of the Project Development Approvals System Final Report' commissioned by Western Australia Government, stating:

... the GWA 2002 report identified that regional resource management plans need to take a long-term view of what is appropriate and sustainable so that new proposals can be considered accordingly.

The above can be achieved through use of environmental protection objectives or goals developed by an EPA in consultation with other agencies.

Prior to commencing strategic environmental assessment, environmental protection objectives should be developed to provide the basis for a consistent policy in relation to development areas. A centralised agency would be better able to achieve this consistency.¹¹⁵

4.2.2 Structure

Most submissions that were in favour of an EPA operating in the Northern Territory were very clear about the structure they would prefer. For example for the Arid Lands Environment Centre, an EPA in the Northern Territory must possess the following features:

- *It should be an independent, statutorily constituted agency*

This is a common model across Australia and will provide the necessary accountability, freedom from political interference and separation from government agencies (with potential conflicts of interest) to operate as a best practice environmental protection regulator. It should be statutory so that only the parliament has the power to approve changes to its constitution.

- *It should be governed by an independent Board*

An independent board would provide an overall strategic direction for the ERA. It should be immune from Ministerial interference and comprise the CEO of the EPA and expert community members selected by an open, advertised process.

- *It should have formal accountability via annual reports and written reasons for all decisions.*

Accountability should also include regular meetings with government agencies, industry, interest groups and the community.

¹¹⁴ Submission No. 32, NT Greens, 11 June 2004

¹¹⁵ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

- *There should be an appeals procedure for decisions.*

*The appeals process should allow both developers and community members with legitimate concerns for the affected environment to appeal decisions as to whether an environmental assessment should be undertaken, what level of assessment occurs, queries into EPA recommendations and decision by Ministers or government agencies. This is far superior to current biases in the Development Consent process where only developers can appeal decisions.*¹¹⁶

Charles Darwin University is of the opinion that:

Whatever structure is agreed upon the resultant 'Environment Protection - NT' must

- (a) Be fully resourced,*
- (b) Be charged with the responsibility for administering an Environment Protection Act (or similar) that is linked to legislation governing development and planning, and*
- (c) Be responsible for developing appropriate environmental policy that provides the framework for major infrastructure developments.*¹¹⁷

The combined submission from the six environment groups is of the opinion that an EPA as a regulator should have the following characteristics:

- *Be an independent, stand alone, statutorily constituted agency with statutory objects and statutory responsibilities;*
- *Be governed by an independent Board;*
- *Have formal accountability;*
- *Be constituted in separate divisions to avoid conflicts of interest developing;*
- *Be adequately resourced (including appropriate funding and expert and experienced staff).*¹¹⁸

The NT Greens advocate the creation of a statutory Environment and Heritage Protection Authority (EHPA) that maintains the important connection between environment and heritage. Furthermore, the NT Greens call for the EHPA to be given enforcement and discretionary assessment powers over other environmental protection Acts and their subsidiary regulations.¹¹⁹

4.2.3 Implications for Implementation

DIPE presented the Committee with three major options for the structure of an EPA; being an government agency, a statutory authority or an environmental watchdog

¹¹⁶ Submission No. 15, Arid Lands Environment Centre, 1 April and 3 June 2004

¹¹⁷ Submission No. 23, Charles Darwin University, 30 March 2004

¹¹⁸ Submission No. 30, Six Environment Groups Combined, 11 June 2004

¹¹⁹ Darwin Public Hearing, NT Greens Presentation, 11 June 2004

position, and the primary implications of establishing either option. According to DIPE's submission, the creation of a government agency would be the simplest to implement and involve minimal changes to the existing administrative arrangements. If however, additional regulatory functions, such as mining, aquaculture, agriculture and hazardous goods as well as an increase in enforcement powers, changes to legislation and resource allocation would be necessary.¹²⁰

*The second option of a statutory authority with a board and committee would be the most complex to implement, according to DIPE's submission. This would be due to the amount of time required for inter-agency negotiations, legislative amendments, and to seek and appoint suitable members of the authority.*¹²¹

Subject to the required legislative changes, DIPE explains that the implementation of the third option, an environmental watchdog position, could take place relatively quickly. However, any changes to the existing arrangements for regulatory functions, would lengthen implementation time.¹²²

The combined submission of 6 environmental groups recommends that:

*Constituting and resourcing an EPA will necessarily take time and resources, and it will therefore probably be necessary to stage its introduction. We submit that the most important first step will be to appoint the independent EPA Board. Once the Board is established, it will be in the best position to evaluate the state of the NT environment and therefore determine at a strategic level how the remainder of the changes necessary to establish the EPA as envisaged in this submission should be implemented.*¹²³

The NT Greens stated that:

*The first step to the establishment of an EPA is to legally define the composition and objectives of an independent board to govern the authority. This body will then be responsible for prioritising implementation of these objectives.*¹²⁴

The advice from the Chairperson of South Australia's EPA was:

It might be that you need a, whilst the legislation is being developed there is an implementation committee. You have got to have a group of people who are well versed in setting up governments arrangements, institutional arrangements, dealing with a new government function. I mean this stuff just won't happen through osmosis and the best will of bureaucrats, you actually need a driving force government to say 'we establish a pretty high powered group of individuals in from other parts of Australia' for example, for people

¹²⁰ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

¹²¹ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

¹²² Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

¹²³ Submission No. 30, Six Environment Groups Combined, 11 June 2004

¹²⁴ Submission No. 32, NT Greens, 11 June 2004

*who set up these organisations, it is that organisation theory, the management structure and legislation, the linkages and all those sorts of things. So it is not, I think you actually have to have a project planned to say; legislation, institutional arrangements and all the other bits and funding that go with it.*¹²⁵

4.3. DEMOGRAPHIC AND GEOGRAPHIC IMPLICATIONS

The implications of an EPA operating in the Northern Territory, owing to its unique demography and geography was discussed by many submissions including Darwin City Council, who pointed out that:

*Given the Northern Territory's peculiar geography and demographics any NT EPA framework should be based on results of extensive interstate research and with significant consultation between all levels of government, industry and the community.*¹²⁶

From DBIRD:

The Northern Territory covers a large area, has a small population base and has a small industry base with a focus on primary industry (pastoral and agricultural) and development of natural resources (fisheries, mining and petroleum).

*The Territory currently has a legislative regime and government departmental structure to adequately ensure that any existing or proposed development activities are subject to appropriate levels of environmental assessment and environmental management, so as to prevent or minimise any potential impact on the environment.*¹²⁷

4.3.1 Northern Territory Community

Regarding the view point of some stakeholders, DBIRD stated:

Some stakeholders have a negative view of environmental management in the mining and petroleum industries, largely as a result of legacy issues such as unrehabilitated abandoned mine sites. The establishment of an independent environmental overseer would provide more confidence for those who are so concerned.

It is possible that some businesses may prefer to deal with companies that have the capacity to operate in a more consistently regulated environment

¹²⁵ Dr Vogel, Chairperson, Environmental Protection Authority South Australia, EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹²⁶ Submission No. 16, Darwin City Council, 2 April 2004

¹²⁷ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

*and the existence of an EPA may be a critical or threshold incentive to companies to do business with the Territory.*¹²⁸

Regarding the importance of an EPA having a regional presence, the Committee received from the Arids Land Environment Centre:

*It is critical that an EPA maintain a well-resourced, experienced and expert regional presence across the NT. This will ensure critical local input to EPA activities and perspectives and maintain an effective but independent working relationship with government agencies, local industry, Aboriginal organisations, pastoralists and the general community.*¹²⁹

From Ms Simpson, the Committee received the opinion that:

Specific environmental issues for Central Australia would include water use and re-use, salinity, fire risk, land degradation, buffel grass, waste disposal and recycling, feral animal control and conservation of indigenous animals, birds, reptiles and other wildlife.

*An Environmental Protection Agency for the Northern Territory should be structured and operate to ensure adequate resources and accessible professional expertise is available in Central Australia. This is needed to serve, inform, advise and advocate for the Central Australian community with special attention paid to working closely with the traditional owners of this country.*¹³⁰

Central Land Council recommended that:

*Options for the structure of an environmental (protection) agency should provide for Environmental Protection officers placed in the four major centres of the Northern Territory – Darwin, Katherine, Tennant Creek and Alice Springs with the Department of Infrastructure, Planning and Environment. ... This position could evaluate environmental impact assessments, monitor and support sustainable development and ensure compliance with legislation.*¹³¹

Arid Lands Environment Centre is of the opinion that:

This is particularly important as the NT juggles its expanding nature-based tourism industry¹³² and diverse ecosystems with an unprecedented phase of industry, resource & horticulture development. In central Australia, the emergence of Desert Knowledge as a 'knowledge economy' driver demands an innovative best practice approach to environmental protection.

¹²⁸ Submission No. 31, Department of Business, Industry and Resource Development, 10 June 2004

¹²⁹ Submission No. 15, Arid Lands Environment Centre, 1 April and 3 June 2004

¹³⁰ Submission No. 7, Mardijah Simpson, 18 March 2004

¹³¹ Submission No. 4, Central Land Council, 8 March 2004

¹³² For example, the latest international/domestic tourist TV ads that include Ritchie Benaud's 'marvellous' ad feature a high proportion of NT sites.

Without rigorous and transparent environmental protection policies, planning, assessments, monitoring, enforcement and education, there is an increased likelihood of short- to long-term environmental management problems such as those crippling the Murray-Darling Basin or prohibiting the rehabilitation of Mt Todd Mine, whilst in central Australia there is an ongoing slow decline in the region's unique biodiversity due to the lack of regionally coordinated management tools.¹³³

The NT Greens submitted the consideration of social and cultural impacts:

Social and cultural impacts are a major part of environmental assessment and planning that are greatly undervalued and often overlooked altogether. The EPA should treat social and cultural impacts with just as much importance as economic and ecological impacts. A failure to do so will undermine public faith in the authority. The only substantial social and cultural impact studies undertaken in the NT to date have been in relation to Ranger Uranium mine. The original Fox report put a large focus on social and cultural issues. The KRSIS reports of 1998 also focused primarily on social and cultural impacts.

It is an indictment on the NT environment assessment process that no substantial social and cultural impact studies have yet been conducted. The sections on social and cultural impacts in most NT EIA and PERs not worth the paper they are written on. There has never been a social impact assessment of the impact of the Gove Bauxite mine, refinery and town. There was no social and cultural impact assessment of the MacArthur River Zinc Mine. The list goes on. It is about time that the NT Government took indigenous matters seriously in the Impact Assessment process. The Great Whale Scoping process carried out in Quebec Canada stands as an excellent example of how indigenous and other social and cultural perspectives can be integrated into the EIA process.

A key part of any IA process, especially in remote areas, should be the measurement of baseline social and cultural data. Without baseline data it is impossible to measure the impacts of developments on indigenous and other populations. This is often very convenient for proponents as they can then not be held responsible for the negative impacts on these communities.¹³⁴

4.3.2 Indigenous Territorians

Specific mention was made by several submissions on the importance of carefully considering the implications of an EPA in the Northern Territory for indigenous Territorians. For example the Indigenous Land Corporation who informed the Committee that:

The key functions of an EPA with implications for Indigenous people include:

¹³³ Submission No. 15, Arid Lands Environment Centre Inc., 1 April and 3 June 2004

¹³⁴ Darwin Public Hearing, NT Greens Presentation, 11 June 2004

1. *assessment of environmental impact statements for development proposed on or adjacent to Indigenous held land – particularly social impact as a component of EIA;*
2. *undertaking investigation, prosecution and enforcement in relation to incidents that breach conditions of approvals and/or relevant legislation that are affecting Indigenous held land (directly or indirectly);*
3. *development of independent policy advice to the Minister for Environment and Heritage.*

*As Indigenous people constitute approximately 25% of the NT population and are significant landholders with approximately 50% of the Territory under Indigenous control, the EPA must develop effective strategies to engage this key stakeholder group.*¹³⁵

The Indigenous Land Corporation believes that:

The NT Government has an opportunity unavailable to any other jurisdiction, to develop, establish and operate an EPA that integrates and addresses Indigenous peoples needs and knowledge, as well as facilitating their active involvement in an EPA.

The ILC encourages the EPA to undertake continuing education programs for the general community with a particular focus on the Indigenous community. Such education programs are important for:

- *improving understanding of the operations and functions of the EPA;*
- *building support for the EPA which can improve investigation and enforcement activities eg. including the community in a “watchdog” role, improving quality and relevance of major project Environmental Impact Assessments (EIA) through stakeholder contribution to and participation in the EIA process.*¹³⁶

Charles Darwin University believes that the environmental protection goal for the Northern Territory should be:

*An ongoing commitment to preserving sustainable futures that include the protection of a unique healthy environment coupled with development of economic prosperity for all sectors of the community and recognition and respect of the Indigenous cultural heritage that is such a significant facet of Territory life.*¹³⁷

The Northern Territory Minerals Council informed the inquiry that:

The critical issue for the resource industry in the Territory, however, is that of access to land for exploration and mineral and petroleum development.

¹³⁵ Submission No. 13, Indigenous Land Corporation, 31 March 2004

¹³⁶ Submission No. 13, Indigenous Land Corporation, 31 March 2004

¹³⁷ Submission No. 23, Charles Darwin University, 30 March 2004

Access to a significant part of the Territory is subject to the regime set out in the Commonwealth's Aboriginal Land Rights (NT) Act 1976 (ALRA). Additionally, the resource industry is subject to the workings of the Commonwealth's Native Title Act 1994 for the balance of the Territory's landmass. Both pieces of legislation are complex as they are complicated with the former being the subject of many and various reviews of its 25 year history. Work continues with the ALRA such that there are improvements and positive outcomes for all stakeholders.¹³⁸

The NT Greens discussed the issue of development by indigenous people on indigenous land, in relation to environmental protection:

The constraints that will be placed on Indigenous groups attempting to establish development on Aboriginal land will be hard for them to overcome. This is due to their lack of Western Environment expertise and their lack of financial resources. We believe development by Indigenous people on indigenous land needs to be facilitated, but that this should not undermine the Impact Assessment process. We therefore propose that with the new EHPA a position or positions be established whose role is to liaise with Aboriginal organisations and groups and provide them with information on the environmental approvals process.

Indigenous land makes up nearly 50% of the NT and over 80% of the coastline. This land often has high development potential. In order to facilitate indigenous employment and development, we believe it is vital that indigenous people be made aware of environmental requirements. Most industry groups are well aware of impact assessment processes: many indigenous groups are not. It should be a focus of an EPA to better communicate with indigenous people. The Tiwi Islands forestry development is an example where the regular NT assessment process was waived but indigenous groups were then made to go through the Commonwealth process anyway. It is not the place of an EPA to assist indigenous groups with their development applications but it can better communicate in a culturally appropriate way what they are required to do. Perhaps this committee should also recommend that another agency establish means to assist indigenous development aspirations through assisting in the IA process.¹³⁹

In addition, the NT Greens also advocate an EPA in the Northern Territory regulate environmental economics, that is trading in pollution credits, water, emissions and salinity, arguing that:

If different pollution quotas are allocated for catchments or for the NT as a whole then Aboriginal land holders who own nearly 50% of the NT will have a strong financial incentive to enter into development on their land.¹⁴⁰

¹³⁸ Submission No. 28, Northern Territory Minerals Council, 7 May 2004

¹³⁹ Darwin Public Hearing, NT Greens Presentation, 11 June 2004

¹⁴⁰ Darwin Public Hearing, NT Greens Presentation, 11 June 2004

4.4 LEGISLATIVE IMPLICATIONS

From the DIPE, the Committee was informed that:

Whatever EPA option may be adopted will require the revision of existing, environmental protection and assessment legislation within the Territory. The Environmental Assessment Act, last reviewed in 1994, is the most likely legislation to provide the statutory basis for establishing an EPA in the Northern Territory.

The Act currently specifies the statutory administrative procedures to be followed for the conduct of environmental impact assessment (EIA) of development proposals in the Northern Territory. A revision of the Act is desirable to modernise the legislation and to cater for changes to approaches in EIA that have occurred in the last few years (notably the Commonwealth's Environment Protection and Biodiversity Conservation Act).

The scope of the current Act could be broadened to encompass environmental management and sustainability provisions, and to allow for the establishment and role of an EPA, including any changes to environmental regulatory responsibilities.

A major review of the Act is likely to take some 18 months to complete – a similar timeframe to the review underway for the Heritage Conservation Act.

The Waste Management and Pollution Control Act is a less likely alternative option because the Act is potentially constrained in supporting the broader work of an EPA. It is designed to focus on waste and pollution management issues and not general environment protection matters.

The following outlines some related legislative issues that may arise in the course of this Inquiry:

Appeals system

Should provision be made for judicial and or merits-based appeals; who should have standing to lodge appeals – those directly affected by a decision of the Minister/EPA (ie development proponents) or third parties; and who should decide appeals (i.e. the Minister, a Tribunal or independent party).

In any case, consistency with proposed amendments to the Planning Act would be desirable given the close interaction of these Acts, especially for major projects.

Final development approvals

The trend for the Environment Minister to have greater power in determining whether or not proposed development activity can take place is emerging elsewhere. The Commonwealth Environment Protection and Biodiversity Conservation Act provides this power to the Minister for the Environment. Similar circumstances apply in South Australia and New South Wales.

Environmental compliance and monitoring

The perceived conflict of interest in having industry agencies responsible for environmental regulation for their portfolio areas has generated a view in some areas of the public that environmental compliance and monitoring should be conducted by an environment protection agency/authority, rather than by the industry agency.

When the Environmental Assessment Act was last reviewed, the mining industry was a prominent stakeholder and is likely to be sensitive to any changes to the current environmental regulatory regime in the Northern Territory. However, the administrative responsibilities of agencies is a matter of policy for the Government and DIPE does not make a submission in respect of this issue.¹⁴¹

The Information Commissioner provided examples from the EPA legislation of some other Australian jurisdictions to demonstrate the manner in which accountability and public participation can be dealt within objects clauses of applicable Acts.

For example, the South Australian Environment Protection Act 1993 includes amongst its objects (s. 10(1)(b)(B)):

- (vii) to Provide for monitoring and reporting on environmental quality on a regular basis to ensure compliance with statutory requirements and the maintenance of a record of trends in environmental quality,. and*
- (viii) to provide for reporting on the state of the environment on a periodic basis,. and*
- (ix) to promote-*
 - (A) industry and community education and involvement in decisions about the protection, restoration and enhancement of the environment,. and*
 - (B) disclosure of, and public access to, information about significant environmental incidents and hazards.*

Section 4 of the Environmental Protection Act 1994 (Qld) describes a cyclical program by which the objects of the Act are to be achieved. This includes Phase 4, "ensuring accountability of environmental strategies". Section 4(7) states:

- (7) Phase 4 is achieved by-*
 - (a) reviewing the results of human activities on the environment,- and*
 - (b) evaluating the efficiency and effectiveness of environmental strategies, and*
 - (c) reporting publicly on the state of the environment.*

The Queensland legislation also emphasises public participation in government (s.6):

Community involvement in administration of Act

¹⁴¹ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally.

The Victorian Environment Protection Act 1970 contains a set of principles, including the "Principle of Accountability":

- (1) The aspirations of the people of Victoria for environmental quality should drive environmental improvement.*
- (2) Members of the public should therefore be given-*
 - (a) access to reliable and relevant information in appropriate forms to facilitate a good understanding of environmental issues,.*
 - (b) opportunities to participate in policy and program development.*

Inclusion of clearly spelled out objects of accountability and public participation would be a base on which to build specific provisions setting out the mechanisms for achieving those objects.¹⁴²

The Northern Territory Police, Fire and Emergency Services spoke specifically about the existing *Environmental Offences and Penalties Act* and the *Waste Management and Pollution Control Act*, stating:

To date no regulations have been prescribed pursuant to Section 10 of the Environmental Offences & Penalties Act and very few, if any, prosecutions have been commenced pursuant to the offence provisions. Perhaps with the establishment of an Environmental Protection Agency regular monitoring and review of the legislative framework would be possible to ensure that it is meeting the desired objectives. For example, do the defense provisions contained at Section 84 of the Waste Management & Pollution Control Act require tightening so as to enable a successful prosecution to be mounted?¹⁴³

The combined submission of six environmental groups summarises some of the law reform they believe would be required to establish an EPA in the Northern Territory.

Other incidental reform will also be required, for example, to provide for an independent environmental appeals system from all development and management scheme decisions.

New: An Environmental Protection Authority Act

- 1. The Act must establish the EPA and the EPA Board as a separate, independent agency*

¹⁴² Submission No. 24, Office of the Information Commissioner Northern Territory, 6 April 2004

¹⁴³ Submission No. 27, Northern Territory Police, Fire and Emergency Services, 8 April 2004

2. *The Act must specify the objects of the EPA (see 4.2.4)*
3. *The Act must specify the areas of expertise of Board members and the manner of their appointment (see 4.2.2)*
4. *The Act must specify the functions of the EPA and the powers of the EPA (see 4.2.5)*
5. *The Act must specify the immunity of the EPA from Ministerial direction*
6. *The Act must require the EPA to prepare an annual report and hold an annual round table*
7. *The Act must bind the Crown*
8. *The Act must require the EPA to prepare written, publicly available reasons for all its decisions. It should also require the EPA to publish all its reports and recommendations in respect of environmental impact assessment.*
9. *The Act must enable environmental conditions to be put in place as part of all development decisions and management scheme decisions.*
10. *The Act should provide that the decision-making relevant agency or Minister must implement the EPA's recommendation unless it publishes written reasons for not doing so*
11. *The Act must provide that the EPA is to audit other government agencies and statutory corporations*
12. *Environmental bonds should be required for approved developments*
13. *The Act must specify that the EPA has the power to institute enforcement action in respect of a breach of any Act if that breach results in environmental damage*
14. *The Act must provide for third party appeals to an independent body from the EPA's decisions and reports and recommendations*
15. *Third parties should have the right to bring enforcement action in cases where the EPA does not choose to*

Environmental Assessment Act Amendments

1. *The Minister's powers should be transferred to the EPA*
2. *The EPA should have the power to "call in" proposals for assessment, and any person should have the right to refer proposals to the EPA*
3. *The EPA should have the power to conduct its own investigations and require further information from proponents*
4. *The Act should include a list of matters/developments which potentially affect the environment and which must be referred to the EPA. It should be an offence to carry out an activity on that list unless 1) the EPA decides not to assess the activity or 2) until the EPA has carried out its assessment and the activity has received all the necessary approvals*
5. *The Act should allow for the EPA to recover the costs of carrying out environmental impact assessments*
6. *The Act should set out the factors which must be considered in assessments, including cumulative impacts and alternative sites*
7. *The Act should set out the community consultation required.*

Waste Management and Pollution Control Act Amendments

1. *The EPA should be the administrator of this Act*

2. *Specified list of activities which need an approval or licence needs to be expanded to include all activities which carry an environmental risk*
3. *Third parties should have the right to bring enforcement action in cases where the EPA does not choose to*
4. *Licence fees should factor in the environmental costs of development*

Crown Lands Act Amendments

1. *Management plans should be required for Crown land*
2. *The community should be consulted about management of Crown land*¹⁴⁴

With regards to legislative implications, the Committee received from the NT Greens:

*Integral to the successful implementation of the proposed independent environmental regulator is the appropriate legal enactment of the regulatory powers and inter-departmental relations described. In addition to amending the Environmental Assessment Act, and enshrining the new EPA in appropriate legislation, it will be important to revisit existing legislation, with amendments to establish the desired relationship between existing laws and the new regulator.*¹⁴⁵

4.5 RESOURCE IMPLICATIONS

The advice from the Chairperson of Western Australia's EPA was:

*So there are very significant resource implications if you want to do it properly, and one bit of advice, if you can't resource it adequately, don't do it. There is no use raising expectations to here, and then delivering it to there, because your going to have a credibility gap forever, and in fact you're going to destroy the agency before you set it up, these people have expectations, and then you can't deliver it on that, so if you are going to do it, do it well, resource it adequately.*¹⁴⁶

Similarly, the advice from the Chairperson of South Australia's EPA was:

*So, we have about a \$25m budget, around about 230 people and when I came here it was about 180, so we had a budget injection in the first financial year that I was here and that was again government's recognition, setting up an independent agency, you have got to give adequate resources and you have got to give it adequate legislation to enable it to do it's job.*¹⁴⁷

Charles Darwin University points out that:

¹⁴⁴ Submission No. 30, Six Environment Groups Combined, 11 June 2004

¹⁴⁵ Submission No. 32, NT Greens, 11 June 2004

¹⁴⁶ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

¹⁴⁷ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

In a perfect world characterised by unlimited resources a fully independent EP-NT governed by its own board, administering an Environment Protection Act that combines all aspects of environment protection, conservation, air and water quality, pollutants, waste and development legislation might be an attractive proposition. It is not clear how the Northern Territory could afford to establish and resource an Environment Protection Agency on the scale of other Australian states.¹⁴⁸

Adding further:

arguments of scale and resources do not remove the need for a responsible organisation, authority or Government Department to have responsibility and accountability for the protection of the environment in a manner that considers the effects on land, water, air and Indigenous heritage simultaneously.¹⁴⁹

The Department of Health and Community Services cautioned the Committee that:

Unless adequately funded a new EPA is unlikely to be any more effective at ensuring environmental protection than the current structures that are in place. Undoubtedly the effectiveness of existing government departments who deal with environmental protection would be enhanced by increasing levels of resources. It can be argued that rather spending funds on the establishment of an EPA that it would be more cost effective to improve the resource base of existing agencies so that they can more effectively carry out their statutory roles and responsibilities. Improving communication between government departments would also help to maximise outcomes in relation to environmental protection.¹⁵⁰

The submission from DIPE discussed resource implications, stating:

These will depend on the particular EPA model adopted and any changes made to the day-to-day responsibilities and statutory functions of the Office of Environment and Heritage or its successor.

Perusal of the annual reports of EPAs in other jurisdictions does not indicate the specific budget allocation required to meet annual EPA expenses. This would be a matter for investigation by the Inquiry Committee, although DIPE could assist by providing estimates relating to any specific model. However, it could be expected that the costs of most of the interstate models would run into several hundreds of thousands of dollars.

Option 2 (statutory authority with a board and committee) is likely to be the most expensive EPA model for the Northern Territory. Costs will depend on whether the Chairman of the EPA Board is a full-time or part-time salaried position, whether sitting fees are paid to the other members, the level of

¹⁴⁸ Submission No. 23, Charles Darwin University, 30 March 2004

¹⁴⁹ Submission No. 23, Charles Darwin University, 30 March 2004

¹⁵⁰ Submission No. 20, Department of Health and Community Services, 2 April 2004

administrative support provided to the Board, frequency and location meetings, operational expenses involved (office accommodation for the Chairman and associated staff, administrative expenses, IT and communication facilities, document production) and so on.

The existing Northern Territory Heritage Advisory Council provides a comparative cost model. The Council meets four times a year, has nine members (five non-government), and a part-time, non-salaried Chairman. The non-government members are paid sitting fees. Other costs include travel and accommodation expenses for members to attend meetings, and administrative support expenses. The Council costs in the order of \$100 000 per annum to maintain.¹⁵¹

Darwin City Council informed the Committee that:

EPA environmental compliance regimes for Council activities interstate has required substantial fund injections from local governments elsewhere and it is expected to be of similar magnitude in the NT. While usually additional financial resources were made available to Councils in other states, devolution of responsibility meant ongoing additional costs had to be borne by local government in the longer term.¹⁵²

The Northern Territory Auditor-General's Office informed the Committee that:

- The Committee needs to develop clear deliverables and outcomes for such an Agency, which must be measurable both in the short and long term. In this regard I attach a copy of a paper presented to the Australasian Council of Public Accounts Committees in February 2003 which details the names of various agencies that have initiated suggestions for triple bottom line reporting including environmental related matters;*
- The need for clarity between the often conflicting interests of environmental sustainability and economic development. This is particularly relevant where one agency may play dual roles as occurred in another State where a single agency had responsibility for managing old growth forests and for running a wood chipping industry. Perhaps in the Northern Territory this could involve striking a balance between tourism and managing the environment;*
- The need for clarity in levels of authority and compliance with guidelines (or other authoritative documents) issued by any new environmental agency;*
- The need to recognise the unique features of the Northern Territory environment and the associated risks;*

¹⁵¹ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

¹⁵² Submission No. 16, Darwin City Council, 2 April 2004

- *The need to carefully consider reporting arrangements to be imposed on agencies and companies operating in the Northern Territory; and*
- *The need to consider and assess successes achieved elsewhere in Australia by similar environmental agencies.*¹⁵³

The Northern Territory Minerals Council offers the following recommendations to the Committee inquiry:

1. *Hold a Government, Industry and relevant community groups forum to draw out the problem" that drives the desire by some to create an environmental protection agency that is different to the current system. This initial forum would identify the key stakeholders and secure agreement on a list of issues/problems that need to be addressed.*

The Forum would:

- *obtain from stakeholders their particular perceived root causes of these problems/issues and group them into administrative, technical, regulatory, political, social, cultural and research.*
 - *ask stakeholders to provide possible areas for addressing each root cause individually and/or collectively.*
1. *Form a panel of experts from within and outside Government (including key stakeholders representatives) to add to the list of perceived causes and to report to the Sessional Committee on a range of options that would address the list of concerns/ issues including the for and against arguments for each treatment option.*
 2. *Distribute the expert panel's report to stakeholders for comment.*
 3. *Review stakeholder feedback and with the assistance from the expert panel, prepare a detailed report on the areas of concern with a final report being prepared and viewed by stakeholders prior to being tabled in Parliament.*¹⁵⁴

The NT Greens commented that:

When conducting Environmental Impact Assessment, the OE&H does not have sufficient resources to carry out its own investigations of the potential impact of the proposal where the proponent's own documents are deficient. The Office is largely dependent upon documents commissioned by the proponent, and so does not necessarily have sufficient information to prepare recommendations which adequately respond to potential environmental impacts of the proposal.

¹⁵³ Submission No. 11, Northern Territory Auditor-General's Office, 26 March 2004

¹⁵⁴ Submission No. 28, Northern Territory Minerals Council, 7 May 2004

A tight budget also constrains the capacities of the OE&H, such that important programs and functions are simply not fulfilled - most notably, monitoring and enforcement. The Office is forced to choose which issues and projects to focus on.¹⁵⁵

Further the NT Greens adds:

It seems obvious that the skills and experience of many staff of the OE&H, as well as other departments, and other divisions of DIPE, would be invaluable to a new EPA. However it must be stated that we cannot simply reconstitute the OE&H as the EPA. For one thing, the new Authority will require more staff in order to meet the anticipated objectives of the Authority.

Clearly the EPA described in this submission demands significant additional resources, in both personnel and funding. While the EPA should not be expected to pay for itself, it would be appropriate to attempt to recover costs for some services. All revenue should be allocated to the EPA budget.

Fees for assessment, licensing and approval of proposals with relevant environmental impacts should factor the anticipated scale of impact. For example, fees for processing land-clearing applications should be factored by the area proposed for clearing. Applications for water extraction should be factored by the proposed extraction rate. Further contribution to the significant financial requirements of the EPA could be derived from interest on environmental bonds for significant development proposals. Just as there are mining bonds, rehabilitation bonds should be introduced for aquaculture and other project types.¹⁵⁶

Litchfield Shire Council's opinion is:

Council would prefer to see an agency as an independent authority established under its own legislation however at this stage of the Territory's development, Council acknowledges that such a model may be beyond the capacity of the NT Government to fund and may have to initially be established as part of an existing department. Either way, the agency needs to be independent, well funded and resourced otherwise it will not have the ability of meeting its objective of protecting the Territory's environment.¹⁵⁷

DIPE suggests:

Instead of creating an EPA structure in the Northern Territory, perceived community concerns might be addressed, for instance, by amending the

¹⁵⁵ Submission No. 32, NT Greens, 11 June 2004

¹⁵⁶ Submission No. 32, NT Greens, 11 June 2004

¹⁵⁷ Submission No. 17, Litchfield Shire Council, 2 April 2004

*environmental assessment legislation to include specific enforcement provisions, allow for appeals, make the Minister's recommendations on environmental impact assessment outcomes mandatory rather than advisory, and so on.*¹⁵⁸

¹⁵⁸ Submission No. 18, Department of Infrastructure, Planning and Environment, 2 April 2004

Chapter 5 EPA models

5.1. OVERVIEW

The Committee examined and compared the structure and function of existing EPAs in Australia and some other countries, with a view to finding applicability to the Northern Territory context. The Northern Territory is unique from any other jurisdiction in Australia. While certain elements of each model examined held suitability for a Northern Territory EPA or similar, the Committee found that not one operating model examined was applicable in entirety to the Northern Territory context.

Tasmania is the only other Australian jurisdiction without an EPA. The Northern Territory is the only Australian jurisdiction to have not formally considered the creation of an EPA and arrived at a system and structure that adequately meets the needs and desires of the local, national and international community for the long term protection of its environment. The Northern Territory has a distinctive opportunity to learn from the successes and mistakes of other Australian examples and shape its very own best-practice model of environmental protection.

Several written submissions to the inquiry discussed in depth the existing EPA models in Australia including:

- Submission No. 18 from DIPE;
- Submission No. from DBIRD; and
- Submission No. 32 from the NT Greens

5.2 EPAS IN AUSTRALIA

The Committee concentrated its inquiry locally and regionally, closely examining EPAs in Australia and New Zealand. Appendix 5 provides a summary table comparing key elements of each of the EPA models examined by the Committee. Appendix 6 provides a summary of table showing maximum and minimum penalties for environmental offences in Australia and New Zealand. Appendix 7 is a comparison of maximum penalties for environmental offences in Australia and New Zealand.

The EPA models in Western Australia and South Australia were very closely examined by the Committee because of the major differences between the two models in structure, roles and functions.

5.2.1 *Western Australia Environmental Protection Authority*

The Committee met with key staff of Western Australia's EPA (WA EPA) including the Chairperson, Dr Cox, to inquire at length about the roles, functions, powers and structure of the EPA, within the broader system of environmental protection in Western Australia.

Following is a summary of the aspects most relevant to the Committee's inquiry, received from WA EPA. The full verbatim transcript of the briefing from Western Australia's EPA is contained within Volume 3 of this report - Hansard Transcripts, and is recommended reading for a more in depth consideration of the WA EPA model.

In pursuing its objectives, Western Australia's EPA carries out a number of functions including:

- environmental impact assessment;
- formulating environmental policies;
- co-ordinating activities necessary to protect, restore and improve the environment of the State;
- seeking information and providing advice; and
- carrying out studies, investigations and research into problems of environmental protection.¹⁵⁹

The Committee was informed that WA EPA's budget actually sits within the Department of Environment's budget and so precise figures could not be provided.

Environmental impact assessment is an important topic for any discussion on environmental protection. However, a thorough consideration of environmental impact assessment models is beyond the scope of the Terms of Reference for this inquiry. WA EPA briefed the Committee at length on the WA environmental impact assessment system (Refer to Volume 3 of the report – Hansard Transcripts). The Committee was informed that environmental impact assessment occupies approximately 20% of WA EPA's time and resources. It is important to note that the Western Australia system of environmental impact assessment is highly regarded internationally. In a comparative review of environmental impact assessment systems world wide, Western Australia's model of environmental impact assessment rated especially well.¹⁶⁰

A major role of EPA WA is to ensure the protection of the environment regarding development decisions. This is achieved through the provision of high level independent advice to the Minister for Environment and others to ensure that environmental considerations are factored into the decision-making process.¹⁶¹ Another role of the WA EPA is auditing compliance of environmental management plans that have ministerial conditions attached.

Figure 5.1 below shows the organisation structure of WA EPA.

¹⁵⁹ Environmental Protection Authority, Western Australia, Website, <http://www.epa.wa.gov.au/article.asp?ID=1140&area=Profile&CID=1&Category=About+the+EPA>, Accessed 11 October 2004

¹⁶⁰ Wood, C., 2003, 2nd edition, 'Environmental Impact Assessment, A Comparative Review', Pearson Education Limited, England

¹⁶¹ Environmental Protection Authority, Western Australia, 'Annual Report, 2002-2003', http://www.epa.wa.gov.au/docs/1718_EPA_AnnualReport_02-03.pdf, Accessed 11 October 2004

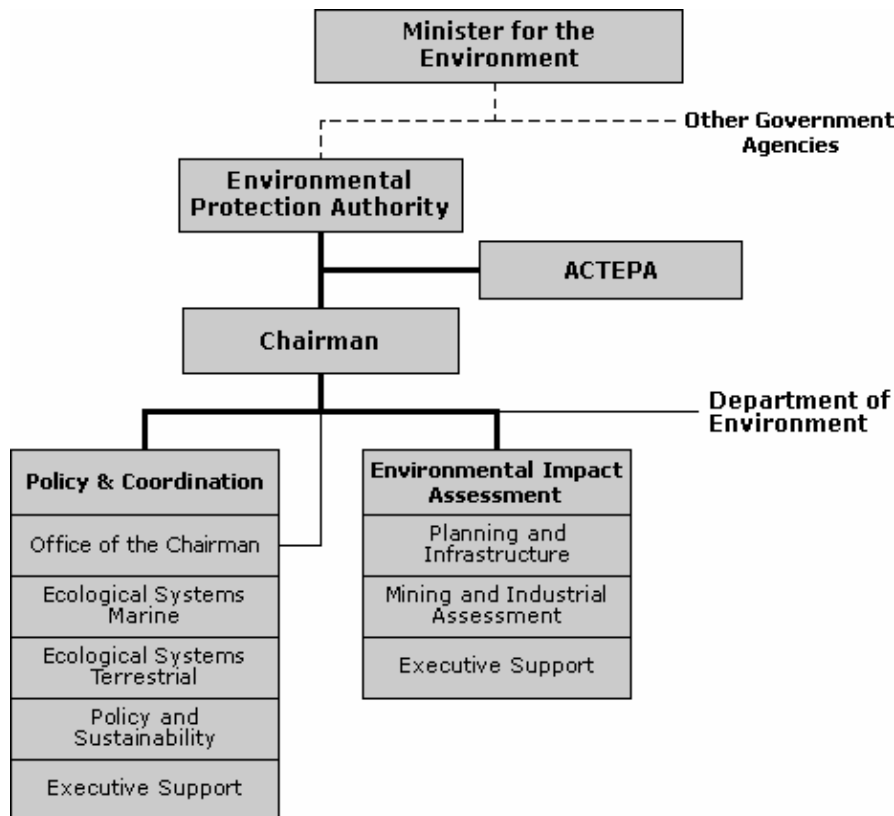


Figure 5.1: Western Australia's EPA organisation structure¹⁶²

The WA EPA was created by the *Environmental Protection Act, 1986 (WA) (EP Act)*. It is a statutory authority with a five member board, consisting of one full time Chairperson and four part-time members. WA EPA undergo statutory reviews every 7 years.

The Chairperson is ministerially appointed. Term of office is limited to a minimum of 3 years, maximum of 7 years.

Members of the Board bring expertise from a number of fields including environmental science, environmental services, government, scientific academia, and community environmental movements. Although the Board has the capacity to decide through voting, the Committee was informed by the WA EPA Chairperson that:

*we don't vote, every time we talk our way into consensus.*¹⁶³

¹⁶² Environmental Protection Authority, Western Australia, Website, <http://www.epa.wa.gov.au/article.asp?ID=1140&area=Profile&CID=1&Category=About+the+EPA>, Accessed 11 October 2004

¹⁶³ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

The Committee was informed of the Advisory Council to the Environmental Protection Authority (ACTEPA) which provides advice to WA EPA on a range of environmental issues. ACTEPA is comprised of a cross-section of members of the community. Rather than representing particular groups, appointees are individuals who can provide a range of perspectives and expertise from industry, conservation and technical fields.¹⁶⁴

The *EP Act* gives the WA EPA 3 very important features:

1. Independence
2. The right to publish
3. Primacy of legislation over all other WA environmental protection legislation

The Chairperson of WA EPA spoke about the authority's level independence, stating:

Now we're not independent in the sense of, independent of government. We're a statutory authority set up of an Act of Parliament. There's a clause in the Act, which is very, very important clause, that enhances our credibility no end. The clause says, that I can not be directed, nor can the board be directed in terms of the advice we give. We can direct them to the process, we can be directed in terms of issues that need to be addressed by us, but when it comes to the content of the advice, we cannot be directed, and that is very, very important, and that's why we've also got very open processes, so we've got a very high level of credibility in terms of what we put on the table is unbiased, unprejudiced advice to government, even though government informed by the minister, is the final vehicle.¹⁶⁵

Counter balancing this independence, the key features of WA EPA accountabilities lie in the following:

1. WA EPA has an advisory role. It does not make decisions.
2. Provision for public appeal rights.
3. Open and transparent decision-making processes.

Mr Sippe, Director, Policy Co-ordination and Acting Director, Environmental Impact Assessment informed the Committee about WA EPA's accountabilities stating:

When we wrote all the powers and accountabilities, we had four great public rights in our mind, it is a very public and transparent process, and this is the public's right to know, the public's right to be informed, the public's right to be heard, and the public's right to object.

I have been here since 1975 so I was here when the number of offices for the EPA could fit in half of this conference table. It has really been my life's work,

¹⁶⁴ Environmental Protection Authority, Western Australia, Website, <http://www.epa.wa.gov.au/template.asp?ID=19&area=Profile&Cat=Advisory+Council+to+the+EPA+%28ACTEPA%29>, Accessed 4 November 2004

¹⁶⁵ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

working for the EPA and obviously, I love the work, and that is why I am still here.

But the reason I think it has succeeded in Western Australia, is this very fine balance between powers and accountabilities, and governments, I think, successive governments have seen the value in that balance. Because what the EPA really does for government, and it is a big, I guess it is a big plus for political government, is it takes the heat out of environmental decisions for governance. Because EPA deals with the heat through a systematic and orderly process then delivers the government public advice, and the government can accept or reject that advice, as it has done. I mean, there is no obligation, and indeed, there has not been an obligation for governments in the past to accept it, but they generally do, because generally we think it's pretty good. I mean, there's not a riot in the streets if they don't but they do generally give a good reason not to, and it is generally because there is a greater social good or a greater economic good. Because EPA's advice is you know, environmental. But I think it has worked very well. As you would well recognise, we are the only state with this really set up, in Australia.¹⁶⁶

The *EP Act* provides for the Minister to be responsible for the provision of services to the EPA. In reality, this is achieved between the Chief Executive Officer of the Department of Environment and the Chairman. There is also provision in the *EP Act* for WA EPA to go outside the department to obtain assistance from government or the public sector.

A service agreement between WA EPA and the Department of Environment, endorsed by the Minister for Environment, provides for support staff of approximately 70 people from the Department of Environment, EPA Service Unit, which the EPA is directly responsible for. The Committee was also informed about special protocols contained within the service agreement to deal with the exchange of information, business planning and process. Very importantly for the staff of the EPA Service Unit, protocols are contained within the service agreement for the staff to be able to provide the best professional advice without having to present a whole of agency point of view. Mr Sippe explained:

If you have a group, for example, whose job it is to protect the marine environment, they'll say, 'if you were to protect the marine environment, you really should do this'. But someone else will come in and say, 'Well, I am dealing with ----- processes, and if you do that you are going to do that'; and the authority must have access to both points of view, before they decide. ... And so it's got to be professional. There's got to be no surprises, so that everybody knows what's coming up; and people don't ambush each other or behave badly. It's just different points of view about something which is quite complex and quite difficult.¹⁶⁷

¹⁶⁶ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

¹⁶⁷ Mr Rob Sippe, Director, Policy Co-ordination and A/ Director, Environmental Impact Assessment, EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

WA EPA has a policy role, giving advice to the Minister. WA EPA Environmental Protection Policies are statutes that set environmental standards, guidelines, practice and regulations. This is currently being reviewed following advice from WA Parliamentary Counsel recommending the separation of policy and law. The Committee was informed about an arrangement between WA EPA and WA Parliamentary Counsel regarding specific legal instruments, drafted by Counsel, put out for public information and comment, accompanied by explanatory documents prepared by WA EPA. Responses are then fed back into the draft policy. The Committee was informed that at the time of the briefing, the WA EPA were considering setting up a series of State Environmental Policies which will be Government policies.

The Committee was advised by WA EPA:

First of all, my advice is I think you should have them, because they are a extremely useful mechanism for dealing with huge impacts for broad load based discharges and a whole range of other things, so they are very useful instruments. Whether or not you run through the EPA, if you get there, there worth having, I think most other states have them for that reason.

*Secondly, my advice is don't call them policies, because it gets very confusing. Traditionally they are called policies. Policy is such a loaded word ...*¹⁶⁸

Referral Authorities include local Government, other government agencies and proponents. There is also provision for third party referral. Any member of the community can refer a matter to WA EPA for investigation.

Once referral is registered, WA EPA has 28 days to set the level of assessment required. However, if there is inadequate information, WA EPA goes back to the proponent for more information. WA EPA have an infinite amount of time to obtain clarification to ensure WA EPA understand both the proposal and the nature of the submission to determine the significance and magnitude of environmental impacts. Generally, a level of assessment is determined within 28 days.

Third party referrals can be a simple expression of concern to the WA EPA or a more detailed submission. It is up to WA EPA to gather the information required to determine whether there significant environmental impacts are likely or not. The following example was given to the Committee:

It was south-west of the state, in our wine growing regions, where people are very conscious about the need to protect vegetation. The sub division taking place, the community were very concerned about the impact of that sub division on the native vegetation and the fauna that went with it. They referred it to us and we actually came to an agreement that it needed to be assessed. Now you should of, the logical question is why wasn't it in fact

¹⁶⁸ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

*being assessed, the reason why, the local authority hadn't referred it. So the local authority was negligent in terms of not referring it to us. The community was very sensitive to the issue, and referred it.*¹⁶⁹

The Committee was informed of the evolution of WA EPA from once being both the Department of Environmental Protection and the Board, to now being separate entities. A situation occurred in the 1980s, where a conflict emerged regarding the dual roles of Chairperson of the Board and Chief Executive of the department being held by one individual, leading to the separation of the two entities.

Despite this history, the Committee was informed by the Chairperson of WA EPA:

*I favour the South Australian and other models where in fact you've got some integration, I think the separation we've got, is somewhat artificial, which means that the process has some discontinuities in it and you get much more continuity if in fact you have a single agency that covers the whole spectrum of a board, and the agency as one, as opposed to two. But having said that, the agency gives us fantastic service in a sense there are 70 odd people, very capable people, very committed people, who provide a very high level of support to us, and I have absolutely no complaints of the level of support we get it all, but it is through a spirit of cooperation, and there have been times when the Chairman, and the CEO have been at loggerheads, and that has lead to some unpleasant reasonable harm, not particularly desirable, and that is why I favour the South Australia type model, even though that currently, the arrangement here is working very well. ...I like it here, because I'm the sort of person that can work with other people, and the acting CEO is the same sort of person, we can work together, so there is no issues. The Act actually provides a solution that means the Ministers has to get involved, but the Minister should never have to get involved in those sort of issues. They're not policy issues. They're just ... fights about people and personalities. So you're better off resolving the issue through a structural solution, rather than force the Minister to buy into arguments that he or she shouldn't have to.*¹⁷⁰

WA EPA plays a leadership role in the community through EPA Position Statements. Position Statements are about EPA visions and values and provide the basis for progress on particular issues. Discussion papers are prepared and made publicly available for comment. Public feedback is then used to prepare the guidance or position statement. These are not legal statements. These statements express openly and clearly to the community, the position the EPA takes on a particular issue. These statements are reviewed every five years. The Committee was informed that sometimes these statements are translated under Government policy. Other times, they may become law.

... It starts off as being an EPA policy. Other government department's will adhere to it, because we've gone through good process. They own the

¹⁶⁹ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

¹⁷⁰ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

outcome of it all, and then at the appropriate time, and the Minister by the way is very supportive of this process, because she is really concerned about the fact that there are conflict in policies. She'll then effectively endorse it, and she may or may not take it to Cabinet, but in either case, if she endorses it or it goes through the cabinet process, it becomes the government policies. So we are providing a leadership role, so the conflict that you are hypothesising couldn't take place, just doesn't take place, because we are always aware of what's happening, so we try and make sure that they all align.¹⁷¹

The Committee was informed by Mr Sippe, Director, Policy Co-ordination and A/ Director, Environmental Impact Assessment, about amendments to the planning scheme:

... any town planning scheme, or scheme amendment must be referred to the EPA, so we can at the moment go with the scheme, rather than the project, because it's lot more efficient of course, and secondly, we've just had amendements to the legislation, end of last year, which now make it an offence to actually commence a project, not within the EPA system.¹⁷²

Mr Murray, Assistant Director of Environmental Impact Assessment added:

... the EPA can give advice under section 16, it can then deal with planning schemes, and then depending of the level of the information can still further assess these later on. – Mr Murray.¹⁷³

In Western Australia, enforcement and prosecution is the responsibility of the Department of Environment. Environmental health impact assessment currently sits with the WA Department of Health. Soil is within the realm of the Department of Agriculture WA. Conservation and forest management lies with Conservation and Land Management (CALM). Mines are the responsibility the Department of Industry and Resources.

In regards to inter-departmental arrangements for environmental protection regarding mining, the Committee heard:

We've got an arrangement with the Department of Industry and Resources, which used to be the Mines Department, but now linked with another government agency. Whereby, effectively and we've got a MOU between us, whereby they effectively deal with all the small things, and that takes a lot of stuff off our plate, we only deal with the bigger projects. In other words, projects that are going to have a real environmental impact or a real social impact, whereas the ones that are just bread and butter type things, that other department in fact takes care of, but under a framework that's been put in

¹⁷¹ Dr Cox, Chairperson, Western Australia EPA, EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

¹⁷² EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

¹⁷³ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

*place, we have in delegated our powers put in place a screening process, where they effectively screen out anything that is not important, and they send the rest up to us.*¹⁷⁴

In regards to WA EPA appeals process, the Committee learnt that:

*The Act provides for appeals processes, and makes it clear the decisions are the Minister's decisions, not the EPA. The EPA gives advice.*¹⁷⁵

The provision for third party appeals is a key feature of WA EPA's system of appeals.

In regards to appeals from industry, Mr Sippe informed the Committee:

*So they've got 3 appeal rights. They've got the appeal on the level of assessment, they participate in the process, they appeal against the EPA's advice, and they can also appeal on the conditions. So they get a pretty fair run. So it would not be surprising for the industry to think that they were pretty well done by, you know, they have got an opportunity to have their say. And ultimately, when the Minister makes her decision, if they were to lean on the Minister politically for other reasons they can, and they do, I guess.*¹⁷⁶

Part VII of the *EP Act* deals with appeals. The Committee learnt from Mr Walsh, the Acting Appeals Convenor, that appeals are made directly to the Minister via the Office of the Appeals Convenor (the Office). The Office is staffed by four including the Convenor. The Appeals Convenor administers the process of appeals, which includes investigations, consultation and providing a final report to the Minister. The final decision is made by the Minister. Appeals must be made on environmental grounds. The process of determining which appeals are accepted is a regulated process. Appeals must be submitted within a specified time following EPA decisions on a level of assessment. The process links the Minister direct to the EPA decision-making process.

The issue of the process being more of an administrative appeals process rather than a tribunal driven process, was raised. The Committee was informed that the appeals process in WA is separate to the tribunal system because a tribunal process is more legalistic therefore, it can take a longer time for the processing of appeals; and may also be more inflexible. The example of the New South Wales Land and Environment Court becoming a litigious legalistic based system was cited during the discussion.

Mr Walsh stated:

¹⁷⁴ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

¹⁷⁵ Mr Murray, Assistant Director, Environmental Impact Assessment, EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

¹⁷⁶ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

I think the key things at the moment is it is simple, provides access for all, can be dealt with fairly quickly and allows for a fair amount of ministerial discretion, whereas, one of the dangers from a broader government point of view with going to a tribunal based system is you could have very important government projects end up in the hands of the tribunal, which is a non-elected tribunal and it might take a least legalistic or narrow approach, so, you might get into a tribunal and you have a project, knocked off. It's a key government project, due to a tribunal decision and then you end up with government taking the tribunal to the Supreme Court, it can get, sort of, a bit out of control ...¹⁷⁷

Simple level of assessment appeals and appeals against EPA reports can take between one and two months. For bigger proposals where there are multiple appeals against EPA report recommendations, particularly if they are contentious projects, the Committee was informed that the process can take six to twelve months. Licence appeals against pollution licences can take a long time. Appeals committees can sometimes be established, comprising of people from other Agencies, as can specialist committees, for the more complex appeals or if there is a conflict of interest issue for the Appeals Convenor.

Mr Walsh informed the Committee:

In 2003, we dealt with 380 appeals, they probably relate to 100 different projects or licenses. In 2002, we dealt with 422, In 2001, 181, and 2002, 254, so 2002 onwards, we see some particularly substantial increases in the numbers, and yes the workload fairly high. The other thing that is difficult for us, in terms of keeping the pressure on, is we're often the bottle neck in the process, so you have a proponent that's been through a 18 month EPA process, and it's pretty bitter and twisted about all that, he gets spat out the other end, usually with outcome that sort of favourable, they can live with, then they come to our process, and they go 'Christ, here we go again'. That's really difficult because we're getting a lot of pressure from people saying, 'hang on a minute, you're our last point of call, we want our decision'. We say 'yes, fine but we have to look at things properly'. Certainly, out of this government and the way the appeals process is treated, it has become a much more consultative process where we seek to meet with all the panels and get everybody involved, so the short cut of that is difficult, so given a volume of work, sort of fairly extensive processes we follow, is quite a challenge.¹⁷⁸

5.2.2 South Australia Environmental Protection Authority

While both the Western and South Australian EPAs are highly regarded, the Committee's interest in South Australia's EPA (SA EPA) was based on its major

¹⁷⁷ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

¹⁷⁸ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 1, Environmental Protection Authority Western Australia, 3 March 2004

differences to the Western Australia model; the South Australia model being a regulatory model.

The Committee met with key staff of South Australia's EPA (SA EPA) including the Chairperson and Chief Executive Officer, Dr Paul Vogel, to inquire at length about the roles, functions, powers and structure of the EPA, within the broader system of environmental protection in Western Australia.

Following is a summary of the more inquiry relevant aspects received from SA EPA. The full verbatim transcript of the briefing from South Australia's EPA is contained within Volume 3 of this report - Hansard Transcripts, and is recommended reading for a more in depth consideration of the SA EPA model.

SA EPA is an independent statutory authority. SA EPA is the principal environmental regulator. The Chairperson of the Board is also the Chief Executive Officer of the EPA. The Board consists of nine members including the Chairperson. The structure of the Board and the institutional arrangements reflects the functions of the Board.

Figure 5.2 below shows a schematic of the SA EPA organisation structure, alongside the environmental departments of South Australia.

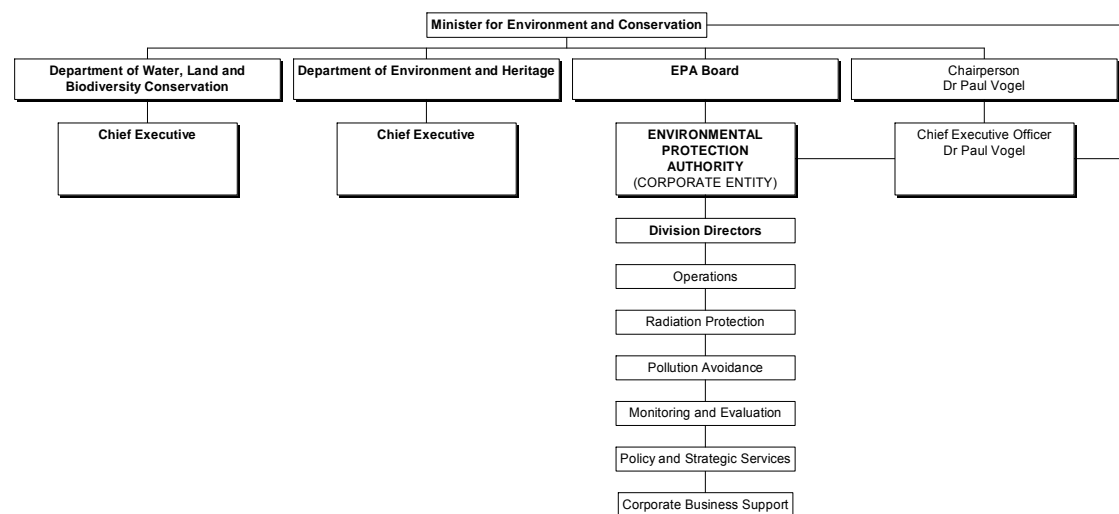


Figure 5.2: South Australia's EPA organisation structure¹⁷⁹

The Chairperson is accountable to the Board. This means the Minister can not direct the EPA in their decisions regarding matters of administration and enforcement of the *Environment and Protection Act 1993 (SA) (SA EP Act)*, hence the independence of the Board. The Chief Executive Officer is accountable to the Minister for the delivery of SA EPA's functions. Directions to the Board from the Minister must be made through Parliament. In response to a hypothetical question regarding a possible

¹⁷⁹ Compiled from evidence collected

occasion when the Minister has to direct the Board, from Dr Vogel the Committee heard:

I think if that does happen, I think there has been a breakdown in the relationship and communication between the Chief Executive and Board and Minister and I think it's those relationships which are critical to this arrangement – having the corporate government arrangements that we do, probably wouldn't work in the private sector but it does work, so far, very effectively in the public sector because of the relationship between the CE, the Board and the minister. And it is about having the minister having confidence in the CE and in that working relationship and in the members of the Board. So, it is a powerful model but it clearly needs to be managed very, very carefully.¹⁸⁰

SA EPA administers the *Environment Protection Act 1993* and the *Radiation Protection and Control Act 1982 (RPC Act)*. The Minister is the key decision maker. The EPA is subject to the direction of the Minister except in a number of situations which are broadly defined. Mr Circelli, Manager of the Office of the Chief Executive explained:

The first one is in actually making a recommendation or a report to the minister so if the Board, who is the governing body of the Environmental Protection Authority, it wants to make a report to the minister, the minister can't direct the Board on that report and very importantly, the minister can't direct the Board on any matters in undertaking compliance and enforcement activities under the act, which is a very large part of what we do. But having said that, there's a lot of other issues that aren't specified as compliance and enforcement activities that the minister can make directions to the EPA but those directions need to be in writing and they also need to be published each year in our annual report and so if the direction is made, it does need to be open and it needs to be transparent.¹⁸¹

In regards to the administration of the *RPC Act*, Dr Vogel as the EPA SA representative, Chairs the Statutory Radiation Protection Committee made up of industry, hospital, researchers and other representatives.

SA EPA has a budget of \$25 million a year (2002-2003) and is staffed by 230 people. The Committee was informed that 16 months prior to this briefing there were 180 staff. The Committee was informed by Dr Vogel:

but significantly we also, the waste levies and 5% of the waste levies that we collect and all the fines and expiation fees all go into a special environment protection fund which can be spent through the authority of the Board on particular projects. But we also are appropriated through parliament, we have about \$8m - \$10m worth of revenue that comes in, so we are not entirely a

¹⁸⁰ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁸¹ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

*net appropriated agency but we are about 2/3 of appropriation through Parliament.*¹⁸²

Mr O'Daly Director, Corporate and Business Support Services Division informed the Committee of the basic sources of funds to operate SA EPA. These are:

1. Direct revenue such as from license fees and waste levies
2. Environment Protection Fund
3. Parliamentary appropriation and other external sources including the Commonwealth Government, private bodies, cash imports, other Government agencies etc.

The Environment Protection Fund is established under the SA *EP Act* in 1993 and it determines that 5% of all licenses and levies will be paid into this fund. The fund can be used according to what is prescribed in the SA *EP Act*, with approval of the Authority and the Minister.

Mr O'Daly commented in regards to funding:

*Just a final observation I will make about the way we are funded now as an independent body compared to when we were part of larger department. It seems to be much better in that, we are able to push our own case much harder with Treasury, then we were as part of the larger organisation, we had to have all our funding bids prioritised internally, before they would even go to Treasury, whereas now we can put in our top priorities direct through the minister, to Treasury and Finance, and we get equal billing with them.*¹⁸³

Dr Vogel added:

*Yes it's a negotiation now between the 3 Chief Executives and the Minister on the priorities for the totalled new initiatives, but they are ranked within the agency. But not necessarily ranked across the portfolio, there is some sense of that of that but it is not, in negotiations with the Treasurer, that is not clear until there is a trade-off type situation. As I said that has been an enormously powerful tool for us, we were successful last year ... So I think we are treated as an equal in that negotiating arrangement.*¹⁸⁴

In relation to the corporate structure of SA EPA, Mr Circelli explained:

... firstly, the Environmental Protection Authority, it is actually a body corporate, it is capable of being sued and it's capable of actually suing as well

¹⁸² EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁸³ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁸⁴ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

*in its corporate name. But also, being the instrumentality of the Crown, which means that it can still hold assets on behalf of the Crown.*¹⁸⁵

In regards to reporting, the Annual Report of SA EPA is to the Parliamentary Environment Resource and Development Committee or South Australia Parliament. Mr Cugley also informed the Committee about that SA State of the Environment Report produced every 5 years.

Dr Vogel explained the main reasons why, in his opinion, the regulator model is preferable, stating:

I continue to stick up for the regulator because I think it's, from time to time regulators are maligned in Australian society but when they fail, like whether it's therapeutic goods or HIH with the credential regulator, when they fail, there is an enormous fallout, you end up with Royal Commissions, like they had in Western Australia and the finance brokers are not adequately regulated and what-have-you. So, there is a need for a regulator and I've summarised in our draft strategic plan the reasons why you need an environmental regulator and largely it's about the fact that there is market failure. So, you have got the impacts of pollution discharges are excluded from market transactions, so, you need a regulator to level the playing field a bit.

It also provides a clear framework and operating rules for environmental protection management and you can set sustainability criteria for our land and water through various policies and regulatory frameworks, it acts as a catalyst for improved environmental performance and environmental sustainable behaviour and it meets community and government expectations that activities that have a potential to cause environmental harm are managed to ensure that those risks to the community and environmental health are minimised and acceptable.

*Another important role the regulators are ensuring are cumulative impacts of human impact are recognised and addressed and finally and importantly, providing better information to the community on current and emerging environmental issues and actively engaging them in those issues.*¹⁸⁶

The position of Chairperson and Chief Executive is appointed on the recommendation of a selection panel to the Executive Government. The Committee learnt that the position of Chief Executive position is appointed under the SA EP Act not the under the *Public Sector Management Act* as are other public sector appointees.

On the question of independence regarding the position, Dr Vogel stated:

¹⁸⁵ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁸⁶ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

... so the Board is appointed by Cabinet and by government but then those people are chosen clearly by the government, so there is also that perception that if you have chosen the board, then how independent is that? But those people take their job very seriously and they are chosen on a basis of their skills and knowledge and expertise and not who they represent, what organisation they represent. So, it has been a challenging time dealing the Board, these are people from very senior positions across government and the community. They take that job seriously and give me, really some very clear directions about where we are going as an EPA which is very different from where it was before. The previous Board was more an operational Board than it was a Strategic Corporate Government's Board.¹⁸⁷

SA EPA has strong regulatory powers and as such, the Minister accepts policy direction from the Board. The Board is a skills-based Board and not representative of particular interest groups. Board membership tenure is for 2 years renewable, however this is currently being reviewed.

On the question of the workability of the Chief Executive position being *ex officio* Chairperson of the SA EPA Board, Dr Vogel explained:

But in the public sector models, it works quite well because my performance again as the Board, although the Board doesn't appoint me, but as CEO and Chair the decisions that the Board makes are given immediate effect through the CEO being Chief Executive of the administrative organisation.

I walk out of here and straight away those decisions are being implemented. What happened before, there was a lack, there was a disconnect between the decisions that the Board would make and how they were implemented by the organisation, there was not a clear linkage between the decisions of the Board and the implementations. So that happens straight away now.¹⁸⁸

Dr Vogel also pointed out the only conflict could arise if the Chairperson is directed in a way that is contrary to Government policy. However the mechanism that exists for dealing with this potential problem is:

... you are sensible about the people you appoint to the Board, and the Board is very clear about why they are there under the government policy. You are constrained by the legislation, and they develop policies which go through a statutory process as well. So there are balances and cheques ... It is difficult to envisage a situation where the Board would be brave enough to do that because it would have to be such a significant issue and it is totally contradictory, that it can't be negotiated or compromised through.¹⁸⁹

¹⁸⁷ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁸⁸ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁸⁹ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

On the question of performance reviews of the dual position, Dr Vogel explained:

When there is a performance assessment I am not there, so there will be the Deputy Chair which will change through the next piece of legislation, the amendments would be the Deputy Chair would assume my role, I leave the room and there is a discussion my performance agreement is with the Board not as other CE's with the Minister, so I can't be ----- for that, quite right.¹⁹⁰

In some cases, SA EPA is a referral body in the development assessment process, providing environmental advice. For some referrals, SA EPA is a directive body. SA EPA is not the body that manages the environmental impact assessment process as it is in Western Australia.

Mr Harvey, Deputy Chief Executive and Director of Operation Division and Mr Cercelli spoke about the evolution of SA EPA. Previously, accountability of the EPA and the Board was directly to the Minister and not to the corporate entity and therefore there was a greater potential for interference. Also, previously the Board was only responsible for administering the *SA EP Act* and not so much the programs, particularly those that didn't relate to compliance and enforcement activities. Following scrutiny and recommendations by the Parliamentary Environment and Resources Development Committee, the Minister selected a model based on the recommendations from that Committee. The current model has only been in operation for 16 months and, regarding the finer points about accountabilities and responsibilities, approximately two years, at the time of the briefing.

The Committee was informed of a recent initiative called Zero Waste SA which is a statutory body aimed at education, infrastructure provision and providing policy guidance on waste minimisation issues.

South Australia has an Environment Development Resources Court which is a specialist court for dealing with these particular matters. Dr Vogel argued in favour of a tribunal system to here appeals stating:

We have judges who are familiar with the Environment Protection Act and the Planning Act and I think you get a faster turn around time and you get judges who actually understand the complexities of dealing with environmental issues because there is just a huge amount of uncertainty around that. ... So that is important I think, plus there is also the third party appeal on decisions etc.. If you start going through the hierarchy of balances and cheques in the system they are considerable in this state in terms of the power that I have compared to the minister.¹⁹¹

The *SA EP Act* considers and covers all ESD principles. Dr Vogel informed the Committee about a very important principle enshrined in the *SA EP Act*:

¹⁹⁰ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁹¹ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

... that you need to take all reasonable and practicable measures. So there is no point, if we say you need to get down to a certain level of admission to comply or to reduce the impact, if there is no technology around that enables that to happen than that is unreasonable to ask a company to spend millions and millions of dollars to investigate technology that might not even work.

So there is a reasonable and practicability test in our legislation for the decisions we make and that is a very powerful test. I think that gives the industry the comfort that we are not going to come in as a feral EPA and demand things to be done which have been done no where else in the world and way beyond best practise, so that is an important principle in our Act.¹⁹²

At the time of the briefing, SA EPA were consulting with an environmental lawyer about the Board giving greater effect to principles in the SA EP Act regarding decision-making transparency, sustainability and caution.

The Committee learnt about the statutory environmental protection policies of SA EPA, which have the same power of legislation and can contribute to national environmental protection measures.

The Committee learnt that the SA EP Act does not have primacy over all other environmental protection legislation as it does in Western Australia.

SA EPA has a strong regulatory and investigation arm. SA EPA has (at the time of the briefing) finalised a compliance and enforcement policy which is basically an escalating response hierarchy dependent on the:

circumstances and a whole range of things, so that our people, the community and industry know that under most circumstances, most situations how we are going to react. So it should be no surprise to a company or a community person when they get expiated, that we thought this might happen, so that policy is just about to be approved by the board.¹⁹³

Dr Vogel spoke about the role of environmental regulation in driving some of the environmental improvements and searches internationally. The Committee was informed about a very extensive coastal water study in Adelaide trying to understand the impacts of discharges on the marine environment. That information will be used to underpin management responses across catchments and across industries. From Dr Vogel the Committee heard:

So we do get involved in research and that involves companies like, Mobil and TXU and SA Water, so we do undertake that sort of research and development. Working with companies is usually through a sustainability and

¹⁹² EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁹³ Dr Vogel, Chairperson, South Australia Environmental Protection Agency, EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

*training program through Business SA, so we train people in Environmental Management as well. But we as an organisation don't spend a lot of money researching new pollution control technologies and government doesn't generally invest in pollution control technologies. They tend to come out of market sources, so as the regulator says 'you need to do this', there is a search for those sort of technologies around the world.*¹⁹⁴

The Committee was informed about some of the problems faced by regulators dealing with environmental problems that have arisen out of poor planning decisions made in the past. Dr Vogel spoke about an example where noxious industries were established close to communities:

*... talk about some situations where as a regulator, and a lot of regulators face this difficulty, historically we have made some very ordinary land planning decisions which have put very noxious industries very close to communities. Dealing with those sorts of situations causes environmental regulators extraordinary problems, particularly if you have got serious health risks and you have got a company that is employing 800 people or 1000 people putting noxious materials, and they want to expand, how do you actually assess that from a health risk assessment from technology based drivers, from understanding about what air quality impacts and health impacts there might be.*¹⁹⁵

The Committee was informed that although sub-divisions are dealt with through the planning process and the Development Assessment Commission, occasionally they are referred to SA EPA for environmental advice. Mr Cugley Acting Director of Monitoring and Evaluation Division, SA EPA has powers of direction under some parts of development assessment regarded as potentially having significant environmental impact. In those cases, SA EPA can direct the Development Assessment Commission or local council, depending on the relevant planning authority, or direct the attachment of certain conditions associated with that development. Also the Committee was informed that under certain circumstances, SA EPA only has advisory powers. The Committee was also informed that South Australia is developing a new Planning Act. It is envisaged that these changes will affect all existing development plans.¹⁹⁶

In regards to strategic assessment linked to regional land use planning the Committee heard from Dr Vogel:

And it comes down the fact, the EIA in this state, like every state, is predictive and reactive, it does not deal well with strategic issues or accumulative impact. That is a fundamental problem, it's not a strategic tool, in it's current form. ... Project by project. But unless you get that right, what they're trying

¹⁹⁴ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁹⁵ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁹⁶ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

to do over there, and I think we should be heading the same way here to, you set the strategic framework, then say; if you meet all these requirements your in, your EIA then becomes basically a very small amount of documentation to comply with the regional and strategic assessment issues. You do that progressively across the state, starting from your high priority areas.¹⁹⁷

The Committee was informed of the additional strategy powers given to the current model of SA EPA:

Very quickly, the additional strategy powers that came in with this new EPA governing model 2 years ago, was basically a doubling of major penalties under the Environment Protection Authority, so most serious offence previously was creating serious environment harm which is defined under our act, 'intentionally, recklessly, and with knowledge', previously it was \$1m fine, maximum \$1m, now it's up to \$2m.

And similarly all the way down for those major offences, have pretty much been doubled.

It also reduced the onus of proof that the EPA needs to take on some of those intentional and reckless charges, they have been inherently very difficult to prove, when and if they actually proceed to trial, many times have been successful on them, because people negotiated a settlement and agreed facts.¹⁹⁸

Regarding offences, from Dr Vogel the Committee heard:

There are strict liability offences in there as well, but there a lower tier. There is strict liability, you've done the offence, you've cause the pollution and harm, there's a maximum penalty for that, they are maybe a ½ - ¼ of the total fine of these ones here, where there's a intentional element in there and reckless element and so forth. So there's a 2 tiered system for all of the major offences.

It also removed an exemption that we had under the act, relating to uranium mining in the state, and other issues dealing with radioactive substances. So previously anything that was managed under the Radiation Protection Control Act was not subject to the Environment Protection Act powers. That's now been removed, effectively what that means now, is that we actually have power on all uranium mining in this state. That really means all the third party civil powers that exist under the Act can now be utilised by third parties, on some of those issues. Also on transparency of that industry is brought into line with every other industry. So there's been some substantial changes, that we're stealing implications of now, still working through those issues. Another exemption removing matters that we dealt with under marine waters,

¹⁹⁷ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

¹⁹⁸ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

pollution from ships, which really related to oil spills predominantly was also removed from the Act.

As I mentioned previously, there's 3 tiers of General Environmental Offences, this is the real benefit, bringing all this other legislation into one, so the noise, the air, the waste and so forth, all those issues are now managed through a common general offence system. They have their own environment protection policies dealing specifically with them. Overlaying all that, is really these very serious and general offences.¹⁹⁹

Mr Circelli informed the Committee:

Just quickly, in terms of the currently legislative agenda, we really have very limited powers to deal with site contaminations, to deal with historic pollutions, pollutions been caused prior introduction of act 1995.²⁰⁰

The Operation Division, which is responsible for compliance and enforcement, is primarily located in Adelaide but has offices in Mount Gambier in the south and Murray Bridge for dealing with Murray River issues.

The Committee was informed by Mr Harvey, that the statutory instruments used by the division are environmental authorisations and licenses. As part of licenses environment improvement programs are used as a tool to ensure environmental approval. Environment Protection Policies are also used, as well are Environment Performance Grievances which provide for a relaxation of fees if the company gives an undertaking to reduce its pollution load. Environment Performance Agreements can also be used to reduce the license fee provided some targets are met over a three to four year period.

Dr Vogel advised the Committee regarding EPA models:

So far I would have to say I am extremely pleased with it, we have had very good response, I mean you always get criticisms from whatever model you have got and you can always improve it I think, whether it be legislation or policy or institutional range, or whatever it is. But all in all, I would have to say that this is working very, very well there is a good group of people here and good structures and I think it is a good model.²⁰¹

For further consideration of SA EPA, particularly in relation to South Australian environmental issues, the full text transcript of the briefing from SA EPA is recommended reading.

¹⁹⁹ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

²⁰⁰ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

²⁰¹ EPA Inquiry Final Report, Volume 3, Hansard Transcripts, Transcript No. 3, Environmental Protection Authority South Australia, 5 March 2004

5.2.3 *Tasmanian model*

Tasmania does not have an EPA. The Committee's interest in the Tasmanian model of environmental protection lies in its similarity to Northern Territory in this respect, as well as the comparability of the sensitivity of Tasmania's environmental issues, its jurisdictional size and isolation. Tasmania's environmental management and pollution control system includes its Environmental Management and Pollution Control Board, Department of Primary Industries, Water and Environment, Environment Protection Policy Review Panel, Resource Management and Planning Appeals Tribunal the Resource Planning and Development Commission (although the latter is regarded as part of Tasmania's planning system). The major units of Tasmania's environmental management and pollution control system are unified by similar objective statements, ensuring a co-ordinated approach to environmental management and protection in Tasmania.

Under the auspices of the Committee, but travelling under Remuneration Tribunal Determination entitlements, Mr Baldwin, MLA inquired personally into Tasmania's system of environmental protection. Mr Baldwin, MLA met with Mr Warren Jones, Deputy Chairperson of the Environmental Management and Pollution Control Board and also the Director Environmental Management, with the Department of Primary Industries, Water and Environment (DPIWE) on the 29th October 2004.

Following are some of the key aspects of Tasmania's environmental protection system reported back to the Committee by Mr Baldwin, MLA.

5.2.3.1 **Tasmania's Environmental Management and Pollution Control Board**

5.2.3.1.1 **Key Features**

- The Environmental Management and Pollution Control Board (the EMPC Board) is an independent statutory body established as the key decision maker under *Environmental Management and Pollution Control Act, 1994*²⁰² (EMPCA).
- The EMPC Board commenced operations from January 1996.
- The EMPC Board is accountable to the Minister. Subject to certain provisions, the Minister may request that a matter be referred to the Minister for its decision under the EMPCA.
- There are 10 Board members (5 principal members and 5 Deputy Board members).
- Board membership tenure is for 3 years with eligibility for re-appointment for not more than one additional term.
- The Board must include at least person of each sex.
- Members of the EMPC Board include representatives from Government, industry and the community.

²⁰² *Environmental Management and Pollution Control Act, 1994*, Section 28,
http://www.thelaw.tas.gov.au/tocview/index.w3p:cond=;doc_id=44%2B%2B1994%2BAT%40EN%2B20041020150000;hison=;prompt=;rec=;term=, Accessed 19 October 2004

- The Secretary of the DPIWE is also the Chairperson of the EMPC Board (Mr Kim Evans).
- The Director of Environmental Management with DPIWE is the Deputy Chairperson of the EMPC Board (Mr Warren Jones).
- The Deputy Secretary and the Manager of Environmental Operations of the DPIWE are Deputy members of the EMPC Board.
- Members of the Board are appointed by the Governor.
- The Board receives professional advice from officers of the Department of Primary Industries, Water and Environment (Environment Division) through:
 - assessments of Development Proposals and Environmental Management Plans (DPEMPs);
 - development and management of Environmental Improvement Programs (EIPs);
 - environmental audits of premises; and
 - environmental agreements and reporting of incidents, malfunctions and accidents.
- The EMPC Board receives secretariat support from the DPIWE.²⁰³

5.2.3.1.2 *Functions of the Environmental Management and Pollution Control Board*

The functions of the EMPC Board are to administer and enforce the provisions of the EMPCA, and in particular, to use its best endeavours:

- To protect the environment of Tasmania;
- To further the objectives of the EMPCA;
- To ensure the prevention or control of any act or emission which causes or is capable of causing pollution;
- To co-ordinate all activities, whether governmental or otherwise, as are necessary to manage the use of, protect, restore or improve the environment of Tasmania; and
- To ensure that valuation, pricing and incentive mechanisms are considered in policy making and programme implementation in environmental issues.²⁰⁴

5.2.3.1.3 *Relevant Legislation*

The *Environmental Management and Pollution Control Act 1994* (the EMPCA) is part of Tasmania's resource management and planning system. The EMPCA establishes the EMPC Board and is the primary environment protection legislation in Tasmania, providing a framework for the management and protection of Tasmania's environment, including the specifications of environmental impact assessment principles. The EMPCA provides a role for local government in small scale activities

²⁰³ Environmental Management and Pollution Control Board Webpage, 2004, <http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/CDAT-53KURY?open>, Accessed 19 October 2004

²⁰⁴ Environmental Management and Pollution Control Board Webpage, 2004, <http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/CDAT-53KURY?open>, Accessed 22 December 2004

that could cause environmental harm, enabling Councils to appoint officers who have powers relating to these activities.

The following regulations have been made under the EMPCA:

- *Environmental Management and Pollution Control (Environment Improvement Program Fees) Regulations 1994*
- *Environmental Management and Pollution Control (Ozone Protection Authorisation Fees) Regulations 1995*
- *Environmental Management and Pollution Control (General Fees) Regulations 1995*
- *Environmental Management and Pollution Control (Transitional) Regulations 1995*
- *Environmental Management and Pollution Control (Infringement Notices) Regulations 1996*
- *Environmental Management and Pollution Control (Waste Management) Regulations 2000*
- *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004*²⁰⁵

The objectives of the environmental management and pollution control system established by the EMPCA are:

- a) *to protect and enhance the quality of the Tasmanian environment; and*
- b) *to prevent environmental degradation and adverse risks to human and ecosystem health by promoting pollution prevention, clean production technology, reuse and recycling of materials and waste minimization programmes; and*
- c) *to regulate, reduce or eliminate the discharge of pollutants and hazardous substances to air, land or water consistent with maintaining environmental quality; and*
- d) *to allocate the costs of environmental protection and restoration equitably and in a manner that encourages responsible use of, and reduces harm to, the environment, with polluters bearing the appropriate share of the costs that arise from their activities; and*
- e) *to require persons engaging in polluting activities to make progressive environmental improvements, including reductions of pollution at source, as such improvements become practicable through technological and economic development; and*
- f) *to provide for the monitoring and reporting of environmental quality on a regular basis; and*
- g) *to control the generation, storage, collection, transportation, treatment and disposal of waste with a view to reducing, minimizing and, where practicable, eliminating harm to the environment; and*
- h) *to adopt a precautionary approach when assessing environmental risk to ensure that all aspects of environmental quality, including ecosystem*

²⁰⁵ Department of Primary Industries, Water and Environment, 2004, Webpage on the *Environmental Management and Pollution Control Act, 1994*, <http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/CDAT-53L38C?open>, Accessed 24 December 2004

sustainability and integrity and beneficial uses of the environment, are considered in assessing, and making decisions in relation to, the environment; and

- i) to facilitate the adoption and implementation of standards agreed upon by the State under inter-governmental arrangements for greater uniformity in environmental regulation; and*
- j) to promote public education about the protection, restoration and enhancement of the environment; and*
- k) to co-ordinate all activities as are necessary to protect, restore or improve the Tasmanian environment.²⁰⁶*

5.2.3.1.4 Environmental Agreements

Environmental agreements are an environmental tool used in Tasmania whereby the EMPC Board of its own initiative or at the request of another person may enter into an environmental agreement to ensure environmental performance within and beyond that required to ensure compliance with the EMPCA. These are binding contracts between the parties to any agreement. The EMPC Board may also prepare and or approve an agreement entered into between other persons as an environmental agreement. The EMPC Board must obtain the Minister's approval before entering into any environmental agreement.

Environmental agreements may be made in respect of individual operations, premises, areas or regions and may apply to industry and activity groups. These agreements must not contravene a planning scheme, interim order or permit and must not relieve a party to the agreement from any duty under the EMPCA or any other Act. Any management, investment and monitoring functions considered essential, by both parties, to ensuring environmental performance beyond the compliance requirements of the EMPCA, must be specified in the agreement.²⁰⁷ An environmental agreement may require regular reporting to the EMPC Board, may contain terms considered by the EMPC Board as constructive to the performance of its functions and may provide for the achievement of the objectives of the resource management and planning system of Tasmania as specified in the EMPCA. These agreements remain in force for a maximum of 5 years from the date of commencement.

5.2.3.1.5 Environmental Improvement Programmes

Environmental improvement programmes are another tool used in Tasmania. These are specific programmes of intent designed to achieve compliance with the EMPCA by:

²⁰⁶ *Environmental Management and Pollution Control Act, 1994*,
http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=44%2B%2B1994%2BAT%40EN%2B20041020150000;hison=;prompt=;rec=;term=, Accessed 22 December 2004

²⁰⁷ *Environmental Management and Pollution Control Act, 1994*, Division 2,
http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=44%2B%2B1994%2BAT%40EN%2B20041020150000;hison=;prompt=;rec=;term=, Accessed 22 December 2004

1. reducing environmental harm; or
2. detailing the transition to a new environmental standard.

Environmental improvement programmes must specify:

1. the objectives to be achieved and maintained under the programme for an activity; and
2. a timetable to achieve the objectives, taking into account:
 - i. the best practice environmental management for the activity; and
 - ii. the risk of environmental harm being caused by the activity.

In addition, the programme must provide for monitoring compliance with the programme and may make provision for review of the programme during the period in which the programme is carried out.

The EMPC Board may require a draft environmental improvement programme be prepared if it is reasonably satisfied that an activity carried out by a person or if that activity in combination with other factors, may cause serious or material environmental harm or if it is not practicable for the person to comply with a State Policy, provision of the EMPCA or regulations or an environment protection policy.

5.2.3.1.6 Environment Protection Policies

While environment protection policies are drafted by the Minister, the Panel reviews all draft policies and reports back to the Minister. The Minister then makes recommendations to the Governor as to whether or not to make the Environmental Protection Policy. While environmental policies are not statutory rule, they may be given subordinate legislation status by the Treasurer. Environmental policies set the objectives to be achieved and maintained by the policy, the qualities and quantities of pollutants permitted to be released into the environment, and qualifying and quantifying other standards and limitations relating to the particular environmental policy. Environmental policies may provide for compliance of regulations within the EMPCA or provide that contravention of or failure to comply with any provision of the policy is an offence and set the fees to be paid in respect of matters specified in the policy.²⁰⁸

5.2.3.1.7 Environment Protection Policy Review Panel

Tasmania's Environment Protection Policy Review Panel (the Panel) consists of the Chairperson who is also the Chairperson of the Resource Planning and Development Commission, and three of the members of the Environmental Management and Pollution Control Board namely the three individuals appointed for possessing either:

²⁰⁸ *Environmental Management and Pollution Control Act, 1994*, Section 96D,
http://www.thelaw.tas.gov.au/tocview/index.w3p:cond=;doc_id=44%2B%2B1994%2BAT%40EN%2B20041020150000;hison=;prompt=;rec=;term=, Accessed 22 December 2004

1. practical knowledge of, and experience in, environmental management in industry, commerce or economic development;
2. practical knowledge of, and experience in, environmental conservation, environmental protection, natural resources management, management and prevention of waste or environmental health; and
3. practical knowledge of, and experience in, environmental management in local government.²⁰⁹

The Panel considers all submissions made in respect of the draft environment protection policy and impact statement and may modify the draft policy and report any findings to the Minister within 42 days after the completion of its considerations.

5.2.3.1.8 Environment Protection Fund

The Environment Protection Fund (the Fund) consists of a proportion of fees paid under the EMPCA, all fines paid to the Fund in respect of offences under the EMPCA, any money received by the EMPC Board from a financial assurance under the EMPCA, any amount paid to the Director or the value of anything forfeited to the Director as a result of a seizure, any money appropriated by Parliament for the purposes of the Fund, any money received as a grant, gift or bequest, any income from investment of the Fund's money and any money received from any other source.

The Fund may be used by the EMPC Board:

- a) *in making any payment required in connection with a financial assurance under this Act;*
- b) *in making any payment required by the terms of an environmental agreement under this Act;*
- c) *in making payments for or towards the cost of action taken to deal with an environmental emergency or its effects;*
- d) *for the purposes of education and training programmes in relation to the protection, restoration or enhancement of the environment;*
- e) *for the purposes of any investigations, research, pilot programmes or other projects relating to the protection, restoration or enhancement of the environment; and*
- f) *subject to section 99, in making grants for environmental improvement purposes.*²¹⁰

5.2.3.1.9 Resource Management and Planning Appeals Tribunal

²⁰⁹ *Environmental Management and Pollution Control Act, 1994, Section 96,*
http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=44%2B%2B1994%2BAT%40EN%2B20041020150000;hison=;prompt=;rec=;term=, Accessed 22 December 2004

²¹⁰ *Environmental Management and Pollution Control Act, 1994, Section 96,*
http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=44%2B%2B1994%2BAT%40EN%2B20041020150000;hison=;prompt=;rec=;term=, Accessed 22 December 2004

The Resource Management and Planning Appeal Tribunal (the Appeal Tribunal) is an independent statutory body set up under the *Resource Management and Planning Appeal Tribunal Act 1993*.

The Resource Management and Planning Appeal Tribunal is an independent statutory body set up under the *Resource Management and Planning Appeal Tribunal Act 1993*. The Appeal Tribunal hears appeals under Tasmanian resource management and planning Acts including the EMPCA.

The objectives of the Appeal Tribunal are to:

- *promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;*
- *provide for the fair, orderly and sustainable use and development of air, land and water;*
- *encourage public involvement in resource management and planning;*
- *facilitate economic development in accordance with these objectives; and*
- *promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in Tasmania.*²¹¹

Appeals may be made on decisions of the Environmental Management and Pollution Control Board in respect of environmental improvement programmes. The Director, a council or any person who can demonstrate proper interest in a matter may apply to the Appeal Tribunal for an order to be placed on:

- a) *a person (who) has engaged, is engaging or is proposing to engage in conduct in contravention of this Act; or*
- b) *a person (who) has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act; or*
- c) *a person (who) has caused environmental harm by contravention of this Act, any other Act or the repealed Act.*²¹²

The application may be made *ex parte* and if the Appeal Tribunal believes there are sufficient grounds, summon the respondent(s) to appear before the Appeal Tribunal.

The Appeal Tribunal has the power to either:

- a) *require the respondent to refrain, either temporarily or permanently, from the act or course of action that constitutes the contravention of, the potential contravention of, or the failure to comply with, this Act;*
- b) *preclude, for a period specified by the Appeal Tribunal, the respondent from carrying out any use or development in relation to the land in respect of which the contravention relates;*

²¹¹ Resource Management and Planning Appeal Tribunal Website, 2004, <http://www.rmpat.tas.gov.au/home.html>, Accessed 24 December 2004

²¹² *Environmental Management and Pollution Control Act, 1994*, Section 48, http://www.thelaw.tas.gov.au/tocview/index.w3p:cond=;doc_id=44%2B%2B1994%2BAT%40EN%2B20041020150000;hison=;prompt=;rec=;term=, Accessed 24 December 2004

- c) *require the respondent to make good the contravention or default in a manner, and within a period, specified by the Appeal Tribunal;*
- d) *require compliance with any environmental agreement, environmental improvement programme or environment protection notice;*
- e) *require the payment of reasonable costs and expenses incurred by the Board or any other public authority as a result of taking action to prevent or mitigate environmental harm caused by a contravention of this, or any other, Act or to make good resulting environmental damage;*
- f) *require the payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred to a person who has suffered injury or loss or damage, to property as a result of a contravention of this, or any other, Act including costs and expenses incurred in taking action to prevent or mitigate such injury, loss or damage;*
- g) *require payment (for the credit of the Environment Protection Fund) of an amount in the nature of exemplary damages determined by the Appeal Tribunal.*²¹³

Appeals against orders of the Appeals Tribunal made under section 48 lie with the Supreme Court. The Minister may revoke an order of the Appeal Tribunal made under section 48 regarding civil enforcement proceedings if:

- a) *the order has effect, at least in part, by reference to a quantitative value in respect of a particular matter; and*
- b) *a different quantitative value is provided for in respect of that matter in a subsequent Act or other instrument of a legislative character.*²¹⁴

5.2.3.2 Department of Primary Industries, Water and Environment

The administration of the EMPCA is assigned to the Minister and the Department of Primary Industries, Water and Environment. The DPIWE achieves its aims of ensuring best practice environmental management and pollution control in Tasmania by:

- *developing high-quality and contemporary policies and strategies for the protection of the environment;*
- *ensuring that development proposals meet appropriate environmental guidelines and standards;*
- *regulating the environmental impacts of major industrial and municipal activities (including mining);*
- *monitoring environmental performance; and*
- *providing a range of scientific and analytical services.*²¹⁵

²¹³ *Environmental Management and Pollution Control Act, 1994, Section 48,*
http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=44%2B%2B1994%2BAT%40EN%2B20041020150000;hison=;prompt=;rec=;term=, Accessed 22 December 2004

²¹⁴ *Environmental Management and Pollution Control Act, 1994, Section 96,*
http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=44%2B%2B1994%2BAT%40EN%2B20041020150000;hison=;prompt=;rec=;term=, Accessed 22 December 2004

DPIWE comprises seven business divisions being the:

1. Strategic Policy and Planning Division
2. Information and Land Services
3. Food Agriculture and Fisheries
4. Resource Management and Conservation
5. Environment
6. Water Resources; and
7. Corporate Management.

As well as providing secretariat support to the Environmental Management and Pollution Control Board, DPIWE also provides the Board with professional advice on the assessment of permit applications and other developments referred to the Board and also in relation to other statutory and non-statutory functions within the Board's responsibility. Within its annual report, DPIWE provides a brief summary of the Board's major activities and assessments.²¹⁶

5.2.3.3 Resource Planning and Development Commission

The Resource Planning and Development Commission (RPD Commission) is an independent statutory body established by the *Resource Planning and Development Commission Act 1997* which oversees Tasmania's planning system, state of the environment reporting, assesses issues regarding public land use and significant State projects and reviews water management plans.

The RPD Commission comprises six Commissioners, headed by one full-time Executive Commissioner and five part-time Commissioners. Membership is drawn from a range of community, industry, conservation and Local and State Government interests. Currently the make-up of the RPD Commission is:

- *An Executive Commissioner;*
- *A Commissioner with planning experience nominated by the Local Government Association;*
- *A Commissioner with expertise and management experience in resource conservation;*
- *A Commissioner with planning experience and experience in industry and commerce;*
- *A Commissioner with resource conservation or planning experience representing community interests; and*

²¹⁵ Department of Primary Industries, Water and Environment, 2003-2004, Annual Report, [http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/LBUN-65K755/\\$FILE/AR0304_Full_Document_with_Cover.pdf](http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/LBUN-65K755/$FILE/AR0304_Full_Document_with_Cover.pdf), Accessed 22 December 2004

²¹⁶ Department of Primary Industries, Water and Environment, 2003-2004, Annual Report, [http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/LBUN-65K755/\\$FILE/AR0304_Full_Document_with_Cover.pdf](http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/LBUN-65K755/$FILE/AR0304_Full_Document_with_Cover.pdf), Accessed 22 December 2004

- *A Commissioner with public administration experience in regard to project implementation.*²¹⁷

The principal functions of the RPD Commission are to:

- *assess and approve draft planning schemes and draft amendments to planning schemes;*
- *assess projects of State significance;*
- *assess draft State Policies;*
- *prepare the Tasmanian State of the Environment Report;*
- *conduct inquiries into the use and management of public land, and*
- *review the representations and the report of the Secretary of the Department of Primary Industries, Water and Environment relating to draft water management plans (from 9 June 2004).*²¹⁸

The RPD Commission is responsible for the functions prescribed under the following Acts:

- *Land Use Planning and Approvals Act 1993*
- *Public Land (Administration and Forests) Act 1991*
- *State Policies and Projects Act 1993*
- *National Parks and Reserves Management Act 2002*
- *Water Management Act 1999 (from 9 June 2004)*

Minor functions are assigned to the RPD Commission under the following Acts:

- *Aboriginal Lands Act 1995*
- *Conveyancing and Law of Property Act 1884*
- *Environmental Management and Pollution Control Act 1994*
- *Forestry Act 1920*
- *Gas Act 2000*
- *Gas Pipelines Act 2000*
- *Local Government (Building and Miscellaneous Provisions) Act 1993*
- *Major Infrastructure Development Act 1999*
- *Marine Farming Planning Act 1995*
- *Nature Conservation Act 2002*
- *Survey Co-ordination Act 1944*
- *Wellington Park Act 1993*²¹⁹

The *Resource Planning and Development Commission Act 1997*, *Land Use Planning and Approvals Act 1993*, *Public Land (Administration and Forests) Act 1991* and Part 4 of the *State Policies and Projects Act 1993* is administered by the Minister for Environment and Planning.

²¹⁷ Resource Planning and Development Commission Webpage, 2004, http://www.rpdc.tas.gov.au/docs/info_membership.htm, Accessed, 30 December 2004

²¹⁸ Resource Planning and Development Commission, Annual Report 2003-2004, http://www.rpdc.tas.gov.au/dwnl/Annual_Report_03_04.pdf, Accessed 30 December 2004

²¹⁹ Resource Planning and Development Commission Webpage, 2004, http://www.rpdc.tas.gov.au/docs/info_membership.htm, Accessed, 30 December 2004

The *State Policies and Projects Act 1993* (except Part 4) is administered by the Premier. The *National Parks and Reserves Management Act 2002* is administered by the Minister for Tourism, Parks and Heritage.

Chapter 6 Recommended options

6.1 OVERVIEW

Several submissions offered various structured options for the Committee to consider. These options, along with other evidence collected by the Committee were used to draft the four options presented in this chapter.

Each option proposed in this chapter was carefully considered and drafted by the member(s) supporting that option. An assessment of each option was undertaken by the Committee as a whole during the deliberative phase of the inquiry. Although each option was not supported by all members collectively, the Committee agreed to adopt an inclusive approach to all the recommended options. While common features may be present in all proposed options, the differences between options, reflects the varying view points of Committee members in response to the evidence received during the inquiry.

It is important to note that each Committee member whole-heartedly supported at least Option B, C or D. This is testament to the agreement of all the Committee members that reform is required following a recommended extensive audit of the current environmental protection arrangements. The Committee is aware that ultimately, the decision falls on Government to choose an option it believes to be most appropriate for the Northern Territory. The following recommended options offer the Northern Territory community and Government a number of devised structures suitable for the Northern Territory.

6.2 OPTION A

Status quo prevails

This option proposes that the Northern Territory does not establish an Environmental Protection Agency or Authority and does not change the existing environmental protection arrangements.

The arguments against the establishment of an EPA in the Northern Territory outlined in Chapter 2 of this report validate the inclusion and consideration of this option.

6.3 OPTION B

EPA as independent statutory authority

Separate Department of Environment

Links between the EPA and the Development Consent Authority

6.3.1 Introduction

- This option advocates streamlining the current processes of environmental protection.
- If the Northern Territory is to have an Environmental Protection Agency/ Authority (EPA), then the EPA should be an independent statutory authority, overseen by a board.
- The Northern Territory is not big enough to afford a fully blown EPA as another extension of the current bureaucracy, so the Northern Territory should modify the existing arrangements.
- The EPA must demonstrate independence and be independent in order for it to be effective.

6.3.2 Conceptual Model

- Advocates merging all the areas of environmental protection and management into one Department of Environment, including the Office of Environment and Heritage, Parks and Wildlife and Conservation and Natural Resources.
- The EPA should be a separate entity to the Department of Environment.
- There should be links between the EPA and the Department of Environment and the Development Consent Authority.
- Establish assured access to and exchange of technical expertise between organisations through a Memorandum of Understanding (MOU) between the Chief Executive of the Department of Environment and the Chairperson of the EPA Board and the Chairperson of the DCA.
- Environmental protection, compliance and expertise of environmental regulations regarding mining from the Minerals and Energy Division to be brought under the Department of Environment.
- This way, the regulatory framework for environmental protection regarding mining is outside of production and the EPA can look at environmental protection regarding new mines within the tenement unlike current system where the Office of Environment can only monitor outside the mine tenement.
- Environmental protection regarding the mining industry needs to be seen to be independent of business and industry (economic interests).

- All other roles and functions of the Minerals and Energy Division remain within DBIRD.
- Chairperson of the EPA Board is a separate person to the Chief Executive of the Department of Environment.
- Small number of members (between 3 - 5) with the flexibility for full-time and part-time employment of board members and limited terms for re-employment.
- EPA Board should be accountable to the Minister but the Minister can not give direction to the EPA for its decisions.
- EPA Board members to be appointed through endorsements by the Sessional Committee on Environment and Sustainable Development.
- This option borrows from the Western Australia model. While all the environmental protection regulation regarding the mining industry is within Western Australia EPA's jurisdiction, there is a MOU between the Western Australia Department of Business and Industry and the EPA. The Department of Business and Industry deal with the smaller issues and cases regarding mining and the EPA are responsible for the larger projects with the potential for significant environmental impacts.

Figure 6.1 below charts the recommended Option B.

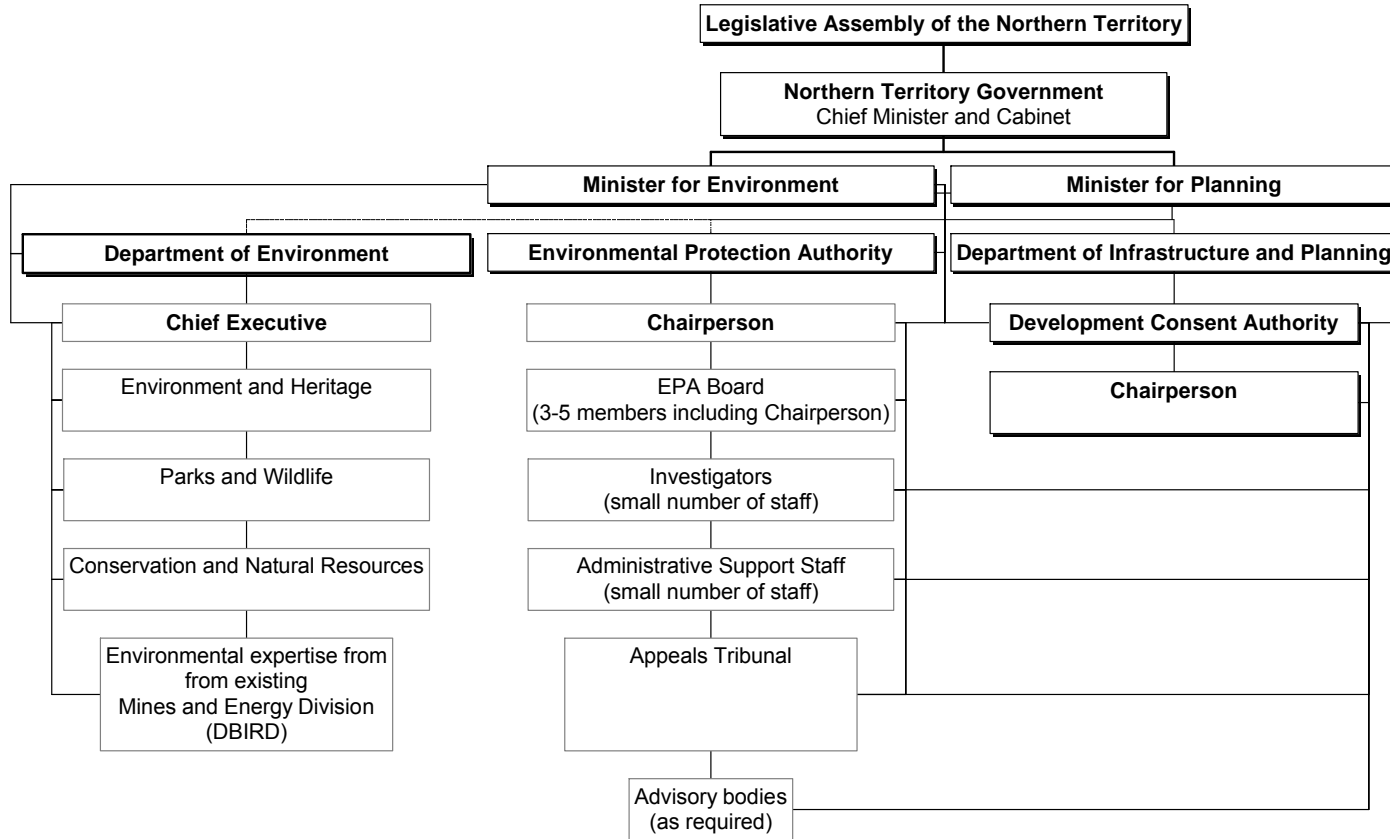


Figure 6.1: Organisation chart of Option B

6.3.3 Roles and Functions

- Department of Environment looks at environmental planning and research and some policing roles. EPA looks at significant issues. DCA also deals with issues and can refer to EPA
- Any Government Department when doing work related to the roles and functions of the EPA must be accountable to the EPA Board.
- Recommendations made by the EPA made direct to the Minister for Environment.
- If the Minister rejects recommendations from the EPA then the reasons for this decision must publicly announced.

6.3.4 Development Consent Authority

- Must refer to the EPA when dealing with any development that has major environmental implications.
- EPA must investigate the potential environmental implications of any major public developments.

6.3.5 Planning

- Leave existing planning arrangements as they are.

6.3.6 Referrals and Appeals

- Any one can refer a matter to the EPA for investigation, including local councils and individuals but the referral must satisfy certain criteria.
- For individuals for example, perhaps a stipulation that there be a certain number of signatures for it to be a valid referral.
- The establishment of an appeals tribunal for appeals from the proponent or third party on EPA decisions.

6.3.7 Advisory bodies

- Bring in advice from outside the EPA from time to time when necessary. For example if the EPA is looking at a nuclear waste repository this requires the technical advice of experts.

6.3.8 Review Periods

- Independent review from outside of the EPA as well as within the EPA.

- Three (3) years for the first review, every 5 years thereafter.

6.3.9 Staged introduction

- Advocates a natural staging of the introduction that takes into account the practicalities of the implementation and restructure of the current arrangements.
- Practical implications include creating the legislative framework, appointments, restructuring and implementation.
- Twelve (12) months minimum for the introduction.

6.4 OPTION C

Independent Commissioner for the Environment Environment Protection Commission Sustainable Development Authority

6.4.1 Introduction

This option:

- proposed by the CLP, advocates enhancing existing Northern Territory instrumentalities with minimal changes to legislation.
- recognises that whilst the organs for environmental protection already exist in the Territory, an **Independent Environment Commissioner**, appointed by Parliament, will provide an appropriate level of independent advice.
- proposes that the current Office of the Environment and Heritage become the **Environment Protection Commission** and be separate to the Department of Infrastructure and Planning.
- proposes the Development Consent Authority become **The Sustainable Development Authority** (SDA), with broadened powers to include all development applications, including mining.

6.4.2 Conceptual Model

- Create the new position of the Independent Environment Commissioner by Parliamentary appointment. Commissioner answers to Parliament, but is administered under the Environment Minister and is CEO of the Environment Protection Commission. Makes recommendations and reports to Executive Government and the Sustainable Development Authority.
- Rename the Office of Environment and Heritage to the Environment Protection Commission under the Independent Environment Commissioner by administrative change. Commission to conduct environment assessments, provide policy advice to Government and conduct community engagement and educational functions. The Environment Protection Commission, through the Commissioner can act on references by any third party and must act on any reference from Executive Government and or the Commissioner. The EPC will also deal with heritage matters, with the current Heritage Advisory Council continuing in its role.
- Extend and broaden the powers and functions of the Development Consent Authority by legislation, (renamed the Sustainable Development Authority) to deal with all public development applications in the Northern Territory. Particularly major developments with significant or the potential for significant environmental impact. The SDA will make decisions for development approvals including mining after considering reports from the Environment Protection Commission and all other government agencies. The Sustainable Development Authority will accept public submissions and conduct public meetings as per the current Planning Act, as will the EPC.

- The regulatory and compliance responsibilities, in regards to environmental protection, currently held by the Office of the Environment and Heritage and Mines and Energy Division of Department of Business, Industry and Resource Development, to remain unchanged.
- Provision for third party appeals.
- Current Ministerial administrative arrangements remain.

6.4.3 Functions and Roles

- Monitoring and compliance will be carried out by the responsible agency to ensure compliance with rulings of the SDA and recommendations of the EPC. For example: mining inspectors from the current division of Mining will carry out compliance of mine management plans and likewise environment officers from the Environment Protection Commission will monitor impacts on other developments. This would also include other agency officers who currently operate under legislation such as the Water Act etc.

6.4.4 Independent Environment Commissioner

- The Commissioner's first function will be to carry out an audit of current legislation and departmental practices in relation to environmental and heritage protection.

The Independent Environment Commissioner's functions to include:

- Conducting environment assessments;
- Providing policy advice to Government;
- Community engagement and educational functions;
- the power to investigate any issues of environmental consequence and therefore the Independent Environment Commissioner must have unfettered access to any Northern Territory Government data (similar powers to the Ombudsman);
- Providing recommendations to Parliament; and
- Setting environmental standards and guidelines.

6.4.5 Environment Protection Commission

- Assume functions and roles of the existing Office of Environment and Heritage.
- Investigate matters referred by Executive Government.
- Deal with heritage matters, with the current Heritage Advisory Council continuing in its role.
- Must act on any reference from Executive Government and or the Commissioner.
- Through the Environment Commissioner, the Commission has the power to act on matters referred by any third party.
- Set environmental standards and guidelines.

6.4.6 Sustainable Development Authority

- Conduct development assessments;
- Decide on development approvals;
- Monitor compliance under *Planning Act* requirements;
- Provide policy recommendations;
- Educate and raise public awareness of the community and industry in conjunction with the Office of Environment and Heritage;
- Ensure heritage protection with regards to proposed developments;
- Conduct assessments on any public development in accordance with existing powers of the Development Consent Authority for granting permits for land development.

6.4.7 Advisory Bodies

The SDA and the Environment Protection Commission can call on expert advice and or form specialist advisory groups from time to time and place to place.

6.4.8 Appeals Process

- Appeals on decisions made by the Sustainable Development Authority will be heard by the Lands and Mining Tribunal as is the current practice, but with legislative changes to allow acceptance of an appeal from anyone directly affected by the application. This will include the Independent Commissioner for the Environment having rights of appeal.
- Appeals will be dealt with in a defined time-frame and this will require additional resources for the Lands and Mining Tribunal.

6.4.9 Structure

- The Office of the Independent Environment Commissioner is accountable to the Minister for Environment for the delivery of its administrative functions.
- The Independent Environment Commissioner is appointed by and reportable to Parliament.
- The Environment Protection Commission is accountable to the Minister for Environment through the Independent Environment Commissioner.
- The Independent Environment Commissioner is also the Chief Executive Officer of the Environment Protection Commission.
- The Sustainable Development Authority is a full time board, with members appointed by the Executive Government.
- The Sustainable Development Authority is accountable to the Minister for Planning as is the current practice.
- The Independent Environment Commissioner can also access any other government department for legal or technical expertise.

- The Sustainable Development Authority has direct links to the Department of Infrastructure and Planning for technical expertise and administrative support.
- The Sustainable Development Authority can also access any other government department for legal or technical expertise.
- Advisory bodies convened when required.

Figure 6.2 shows a schematic of the structure of this option.

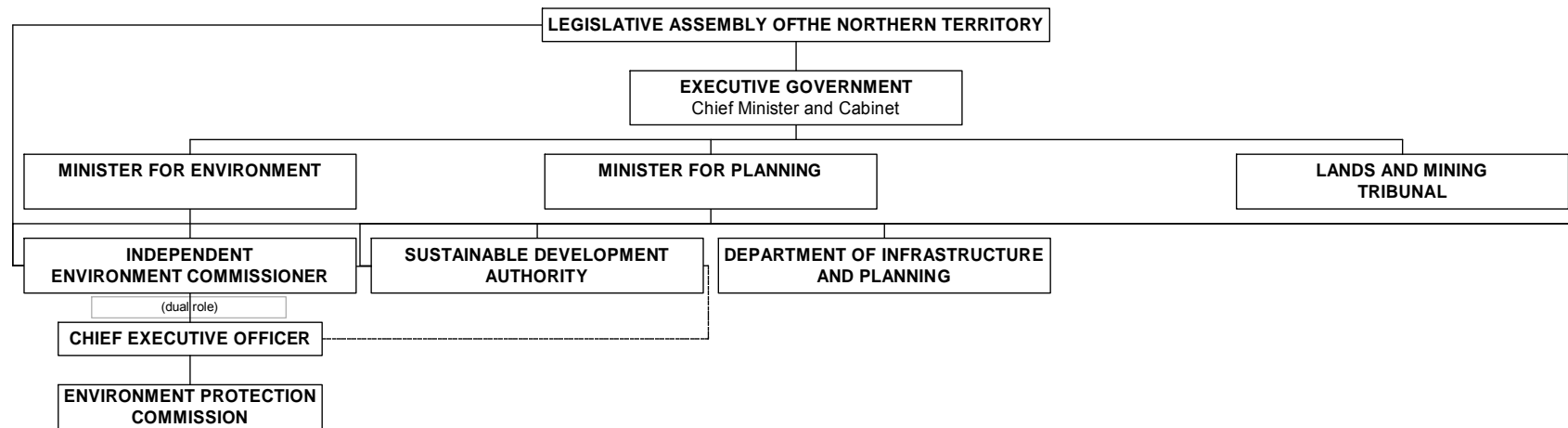


Figure 6.2: Organisation Chart of Option C

6.4.10 Features of Option C

- Minimalist approach to reform.
- Improves the current environmental protection arrangements without creating other bureaucratic structures.
- One new piece of legislation to create, define and empower the Independent Environment Commissioner.
- Independence of the Environment Commissioner
- Suitable to the demographic, geographic and financial context of the Northern Territory (Sessional Committee on Environment and Sustainable Development EPA Inquiry Terms of Reference (b)).
- Leaves regulation expertise, monitoring and controls within the current departmental structures.
- Enhanced role for the public process with the SDA and EPC.
- Enhanced appeals mechanisms.

6.5 OPTION D

EPA as independent statutory authority within the Department of Environment and Sustainability

6.5.1 Introduction

This option advocates introducing an EPA in two phases.

Phase 1 aims to centralise current Government Environment awareness, protection and grant programs into an identifiable EPA program. Phase 1 creates a one-stop environment front-end.

Phase 2 will involve giving EPA regulatory powers, departmental reorganisation and legislative change.

6.5.2 Conceptual Model

- Key focus – protecting environmental quality to maintain the Territory lifestyle.
- Environmental Protection Authority to be within the Department of Environment and Sustainability.
- The Department of Environment and Sustainability to be the umbrella government department for all Northern Territory environmental matters. This includes the existing environment divisions currently within the Department of Infrastructure, Planning and Environment (DIPE); the Office of Environment and Heritage, Conservation and Natural Resources Group and Parks and Wildlife.
- EPA and EPA Board to be established by statute.
- EPA to have four pillars of independence:
 1. Independent board (Minister cannot direct);
 2. Reporting to the Minister for Environment and Sustainability, with recommendations made public;
 3. Prosecution decided by EPA;
 4. Third party and self-referencing powers.
- The EPA through its department becomes the body for setting environmental standards through a new Environment Protection Act which will establish a broad heads of power for the EPA to operate and set standards:
 - (a) for all industry types; and
 - (b) to audit regulatory performance of other Departments which retain environmental responsibilities such as DBIRD (eg Western Australia model that provides for Memorandums of Understanding (MOU) regarding the mining industry).

- Establish an environment inspectorate to professionally deal with prosecution/enforcement action.
- Require the outcomes of any Environmental Impact Assessment to be directive rather than advisory;
- Mining management plans, levels of rehabilitation bonds, aquaculture licences etc to be jointly approved by DBIRD and EPA, as with the Western Australia model.

6.5.3 Scope

- Pollution control and waste to be included in the new department and to be comprehensive across environment portfolio (Parks and Wildlife, Conservation and Natural Resource Management).
- Regulatory advice.
- Policy advice and review.
- Education and public awareness of responsibilities of stakeholders.
- Ability to undertake inquiries to set best practice guidelines.

6.5.4 Functions and roles

EPA functions to include:

- Environmental Impact Assessment
- Approvals
- Compliance and monitoring
- Environment inspectorate (enforcement/ auditing)
- Policy advice
- Education (community and industry)
- Heritage protection

6.5.5 Advisory Bodies

Convened as required.

6.5.6 Appeals process

This option recommends adopting the Western Australia model of appeals, namely:

- The provision for appeals from proponents and third parties;
- Public reporting of decisions.

6.5.7 Structure

- Stand alone Department of Environment and Sustainability.
- EPA Board is statutory and independent.
- EPA Board (maximum of 5 members) consisting of full-time Chair, full-time Director, and up to three part-time members.
- EPA Chair is also the Chief Executive of the Department of Environment and Sustainability (as per South Australia model).
- EPA Board members to be community representatives rather than stakeholder representative.
- Access to technical and administrative support from the Department of Environment and Sustainability.

Figure 6.3 below shows a schematic of the proposed structure of Option D.

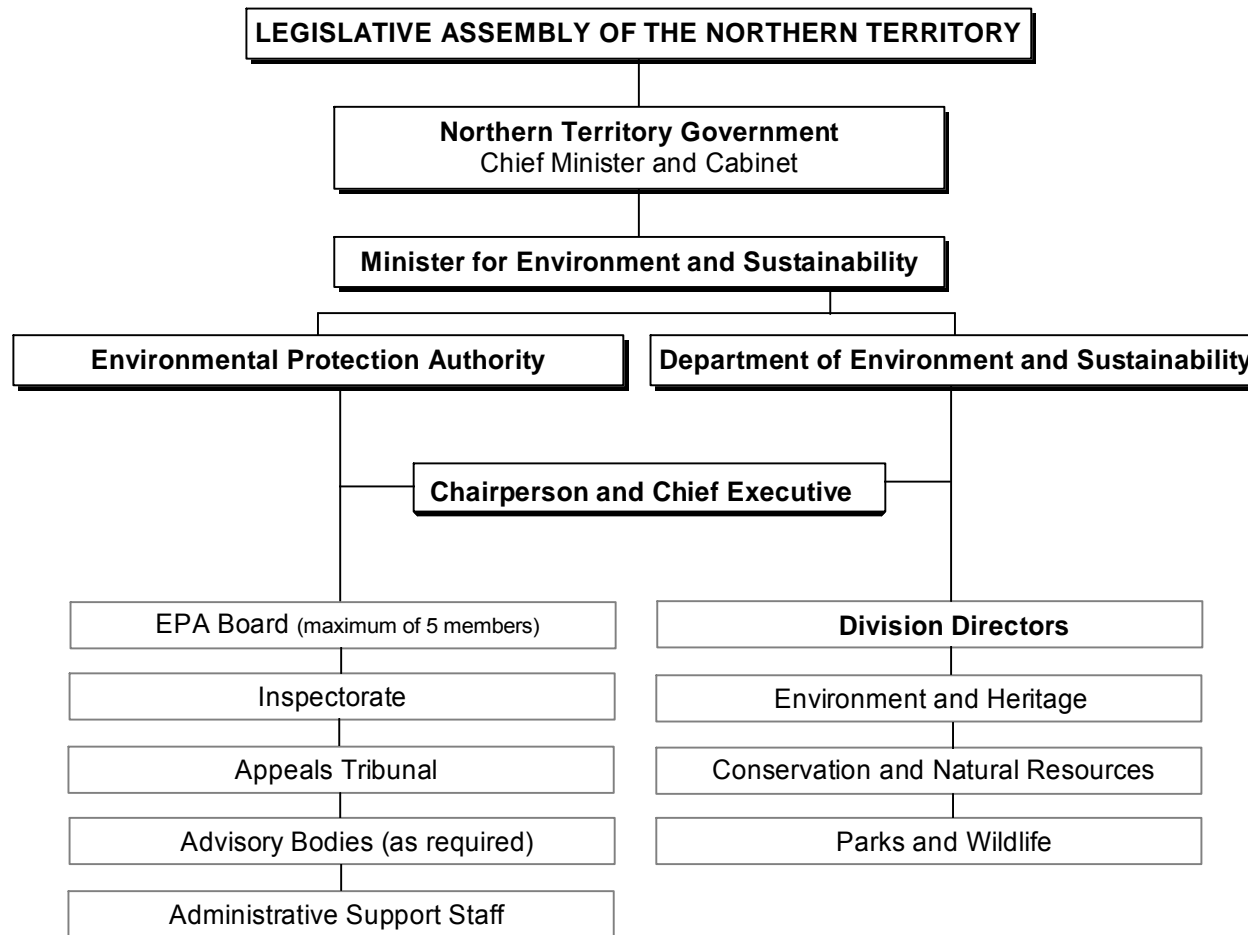


Figure 6.3: Organisation chart of Option D

6.5.8 Features of Option D

- Streamlines and improves the current environmental protection arrangements.
- Small number of members is in keeping with the financial context of the Northern Territory.
- Creates a truly separate department of environment, rather than an office within another Department.
- Clearly demarcates the roles of environment protection, natural resource protection and management; and industry promotion and facilitation.
- Implementation in two stages facilitates the transition and minimises disruption during the restructuring process, to assist the community, business and industry to adjust.
- Utilises all the best-practice principles and processes from the existing EPAs in Australia.
- Improves community confidence and trust in Northern Territory system of environmental protection.
- Integrates governance on environment protection.
- Responds to the changing industrial face of the Northern Territory.
- Facilitate business sector complying with environmental regulations and standards.
- Greater accountability through public reporting.
- Provision for public input, opinion and appeals.
- Allows cost assessments to be conducted during the first phase in order to avoid unnecessary outlays during the more comprehensive implementation phase.

APPENDIX 1: FULL TERMS OF REFERENCE

ENVIRONMENT AND SUSTAINABLE DEVELOPMENT COMMITTEE

TERMS OF REFERENCE

On 27 November 2002, the Legislative Assembly, by resolution, established the Sessional Committee on the Environment. The Minister for the Environment moved -

That, during the present session of the Assembly -

1. A Sessional Committee to be known as the Environment and Sustainable Development Committee be appointed.

2. Unless otherwise ordered, the membership of the Committee comprise three members to be nominated by the Chief Minister, two members to be nominated by the Leader of the Opposition and one independent member and that the Committee shall elect a government member as Chair.

3. The Committee shall be empowered, unless otherwise ordered, to inquire into and from time to time report upon and make recommendations on matters referred to it by the relevant minister or resolution of the Legislative Assembly:

(a) any matter concerned with the environment or how the quality of the environment might be protected or improved;

(b) any matter concerned with the sustainable development of the Northern Territory.

4. The Committee be empowered to send for persons, papers and records, to sit in public or in private session notwithstanding any adjournment of the assembly, to adjourn from place to place and have leave to report from time to time its proceedings and the evidence taken and make such interim recommendations as it may deem fit, and to publish information pertaining to its activities from time to time;

5. The Committee be empowered to consider, disclose and publish the minutes of proceedings, evidence taken and records of similar committees appointed in previous Assemblies;

6. The Committee be empowered to publish from day to day such papers and evidence as may be ordered by it and, unless otherwise ordered by the Committee, a daily Hansard be published of such proceedings as to take place in public; and

7. The Committee have power to appoint subcommittees consisting of 2 or more of its members and to refer to any such subcommittee any matter which the Committee is empowered to examine and that the quorum of a subcommittee shall be 2.

8. The foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the Standing Orders.

Inquiries

On 28 November 2002 the Legislative Assembly referred the following matters to the committee:

1. The efficacy of the establishment of an Environmental Protection Agency for the Northern Territory inclusive of but not restricted to

(a) arguments for and against the establishment of an Environment Protection Agency for the Northern Territory;

(b) options for the structure of an Environmental Protection Agency, taking account of the demographic, geographic and financial context of the Northern Territory;

(c) and if a particular model is recommended, options for its staged introduction.

2. Issues associated with the progressive entry into the Northern Territory of cane toads.

Current Membership

Ms Delia Lawrie, MLA (Chair)

Mr Timothy Baldwin, MLA

Mr Matthew Bonson, MLA

Mr Stephen Dunham, MLA

Mr Elliot McAdam, MLA

Mr Gerry Wood, MLA

**APPENDIX 2: SUMMARY OF NORTHERN TERRITORY GOVERNMENT
AGENCY RESPONSES**

Table A2.1: Summary of Northern Territory Government Agency Responses

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
<p>Department of Infrastructure, Planning and Environment</p>	<p>Mr Barry Chambers Chief Executive Submission prepared by the Office of Environment & Heritage as holding principal responsibility for administering environmental protection legislation</p>	<p>02/04/04 (Received as a formal submission)</p>	<p>Ms Barbara Singer Director of Environment & Heritage</p>	<p>Office of Environment & Heritage administers the following:</p> <ul style="list-style-type: none"> • <i>Environmental Assessment Act;</i> • <i>Waste Management and Pollution Control Act;</i> • <i>National Environment Protection Council (Northern Territory) Act;</i> • <i>Ozone Protection Act;</i> • <i>Environmental Offences and Penalties Act;</i> • <i>Heritage Conservation Act;</i> • <i>National Trust (Northern Territory) Act</i> <p>The Conservation and Natural Resources Division of DIPE are responsible for land conservation, bushfire, weeds management & wildlife conservation services.</p>	<ul style="list-style-type: none"> • <i>Environment Protection & Biodiversity Conservation Act</i> (Cth) • <i>Dangerous Goods Act</i> (NT WorkSafe) • <i>Mining Management Act</i> • <i>Mining Act</i> <p>DBIRD function of environmental regulation of mining & petroleum activities.</p> <ul style="list-style-type: none"> • <i>Fisheries Act & Regulations</i> • <i>Agricultural and Veterinary Chemicals (NT) Act</i> <p>DBIRD function of environmental regulation of aquaculture & agricultural activities.</p> <ul style="list-style-type: none"> • Police, Fire & Emergency Services role in emergency response eg. in a major incident or a spill 	<ul style="list-style-type: none"> • Environment protection services • Heritage Conservation Services • Greenhouse Policy • Environmental impact assessment of all new development proposals; • Environmental regulation of industrial and other polluting activities (excluding mining); • Provision of advice and participation in inter-governmental negotiations on national, international and Commonwealth environmental issues affecting the Northern Territory; • Heritage conservation and protection services; and • Greenhouse matters and 	<p>NOT SPECIFIED</p>	<p>NOT SPECIFIED</p> <p>Concern expressed about how the Office of Environment and Heritage would be placed alongside or within an NT EPA.</p>

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
						policies on a whole-of-Government basis. (For detailed list see Attachment A of Submission No. 18 – DIPE)		
Department of Business Industry & Resource Development	Mr Peter Blake Chief Executive Prepared by: Mr John Carroll General Manager Minerals and Energy	13/01/04 07/01/04 via telephone	Mr Alan Hughes Manager of Information and Legislation Mines & Petroleum Management Division	<ul style="list-style-type: none"> • <i>Agricultural and Veterinary Chemicals (NT) Act</i> • <i>Biological Control Act</i> • <i>Energy Pipelines Act & Regulations</i> • <i>Fisheries Act & Regulations</i> • <i>Mining Management Act</i> • <i>Mining Act</i> • <i>Mt Todd Agreement Ratification Act</i> • <i>Petroleum Act</i> • <i>Petroleum (Prospecting & Mining) Act</i> 	<ul style="list-style-type: none"> • <i>Poisons & Dangerous Drugs Act</i> (DHCS) • <i>Environmental Assessment Act (NT)</i> (DIPE) • <i>Environmental Protection & Biodiversity Conservation Act (Cth)</i> (Cth Department of Environment & Heritage – preliminary assessment of mining & development projects within DBIRD. • <i>Petroleum (Submerged Lands) Act (Cth)</i> – area 	<ul style="list-style-type: none"> • Range of procedural & administrative activities & policy initiatives relating to environmental protection. • Manages programs for responsible development in the minerals, petroleum, pastoral, agricultural, horticultural, fishing, manufacturing & service sectors in the NT. • Supports economic development & sustainable & 	eg. Policy for Access to Biological Resources for Bioprospecting in the NT	NOT SPECIFIED

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
				<ul style="list-style-type: none"> • <i>Northern Territory Petroleum (Submerged Lands) Act</i> • <i>Commonwealth Petroleum (Submerged Lands) Act and Regulations</i> • <i>Plant Diseases Control Act</i> • <i>Stock Diseases Act</i> • <i>Stock Routes and Travelling Stock Act</i> <p>PROPOSED LEGISLATION INTENDED TO BE ADMINISTERED BY THIS AGENCY</p> <ul style="list-style-type: none"> • <i>Biological Resources Act</i> • <i>Plant Health Act</i> • <i>Veterinary Chemicals (Control of Use) Act</i> 	<p>specific pieces of legislation are administered by DBIRD on behalf of the Cth</p> <ul style="list-style-type: none"> • <i>Waste Management & Pollution Control Act (DIPE)</i> • <i>Water Act (DIPE)</i> 	<p>responsible management of resources in the NT.</p> <ul style="list-style-type: none"> • Operational groups: • Business & Trade Development • Minerals & Energy • Fisheries • Primary Industry • Policy Development & Co-ordination <p>There are existing interdepartmental arrangements (particularly with DIPE) for co-operation in environmental assessment of development proposals (mining) and projects.</p>		
NT Police, Fire & Emergency Services	Mr Paul White COMMISSIONER of Police & CEO Fire & Emergency Services	21/01/04	Ms Alison Worsnop Director Legal Services 8901 0232	NIL	Police <i>Common Law, Summary Offences Act</i> <i>Criminal Code relating to environmental matters (Administered by Dept</i>	Police General duty to enforce all laws in the NT. <ul style="list-style-type: none">• Also has a range of specific roles incorporated in a range	NOT SPECIFIED	Agency would seek a co-operative role with an EPA in respect of

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
					<i>Justice)</i> <i>Territory Parks & Wildlife Conservation Act (Administered by DIPE)</i> <i>Fisheries Act (NT)</i> <i>Fisheries Act (Cth)</i> <i>Litter Act (Administered by Community Development, Sport & Cultural Affairs)</i> <i>Ozone Protection Act (Administered by DIPE)</i> <i>Water Supply & Sewerage</i>	of legislation which are broadly for environmental protection eg. Honorary conservation officer under the Territory Parks & Wildlife Conservation Act • Could be called upon to prosecute for summary & regulatory offences under a wide range of legislation relating to environmental offences. This seldom happens as it may go directly to the Director of Public Prosecutions. • Duties to accompany		disasters & emergencies .

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
					<p><i>Services Act (Administered by the Treasurer)</i></p> <p><i>Radiation (Safety Control) Act (Administered by Dept of Health & Community Services)</i></p> <p><i>Soil Conservation & Land Utilisation Act (Administered by DIPE)</i></p> <p><i>Mining Act (Administered by DBIRD)</i></p> <p>Fire & Rescue Service <i>Fire & Emergency Act</i></p>	<p>inspectors under s17 of the <i>Ozone Protection Act</i></p> <ul style="list-style-type: none"> Duties to accompany Water Services Officers under s107 of the Water Supply & Sewerage Services Act Involvement through Chief Health Officer to notify Commissioner of location of radioactive material stores, & the issue of search warrants under the Radiation (Safety Control) Act Powers under s20C & s 20D of the Soil Conservation & Land Utilisation Act in respect of restricted areas & by implication are involved in the enforcement of offences under these sections Powers of entry & inspection under s166 & 190A of the Mining Act 		

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
						<p>Fire & Rescue Service</p> <ul style="list-style-type: none"> No express duties under the Fire & Emergency Act, however officers in practice & policy take environmental matters into account eg fire management in rural areas. Lead agency in respect of hazardous chemical accidents. Lead agency in respect of rescue component to road accidents but does not have a role in addressing environmental damage. <p>Emergency Services</p>		

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
						<ul style="list-style-type: none"> Broad role in planning & co-ordination of responses to all kinds of emergencies & disasters natural & man-made eg. Asian fruit fly & Black Striped Mussel invasions. Role in emergency and disaster management. In the event of environmental disaster eg. an oil spill affecting wildlife, work in conjunction with NTES volunteers, Parks & Wildlife staff & other volunteers. 		
<p>Department of the Chief Minister</p>	<p>Mr Paul Tyrrell Chief Executive</p>	<p>21/12/03</p>	<p>Mr Paul Tyrrell Chief Executive</p>	<p>NIL</p>	<p><i>NOT SPECIFIED</i></p>	<p>NIL</p>	<p>NIL</p>	<p>Posed 2 questions: 1. Is there any evidence that the current administrative</p>

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
								<p>arrangements do not adequately fulfil the task of environmental protection in the NT?</p> <p>2. Are there any disadvantages in retaining the status quo in terms of current best practice</p>

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
								in other jurisdictions & prevailing perceptions?
OCPE	Mr John Kirwan Commissioner for Public Employment	04/03/04 09/01/04 (phone call from liaison officer)	Mr Paul Manuel Employee Relations	NIL	<i>Administration of any public sector employment issues by virtue of the fact that the Commissioner is the statutory employer of public servants in accordance with the Public Sector Employment and Management Act</i>	Employment matters relating to the Administrative arrangements of EPA members.	NIL	NOT SPECIFIED
Darwin Port Corporation	Mr Barry Berwick CEO	19/01/04	Mr Alastair Black Engineering Manager	<ul style="list-style-type: none"> • <i>Darwin Port Corporation Act</i> • <i>Port By-Laws</i> • <i>Port (Handling of Dangerous Goods and Oils) By-Laws</i> 	<ul style="list-style-type: none"> • <i>Port (Handling of Dangerous Goods and Oils) By-Laws</i> • <i>International Convention for the Prevention of Marine Pollution from Ships (MARPOL)</i> 	DPC is responsible for the development and implementation of the Darwin Harbour Oil Spill Contingency Plan in conjunction with the Marine Branch of DIPE.	An Environmental Management System is being developed & implemented by the Corporation covering activities that we directly control. This system is regularly updated &	Not in favour of NT establishing an EPA. Would rather see development of policies and plans within existing

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							expanded to suit the Corporations changing activities.	arrangements.

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
Office of the Information Commissioner	Mr Peter Shoyer INFORMATION COMMISSIONER	13/02/04	Ms Colleen Atkinson Complaints Officer/ Mediator	NIL	<i>Freedom of Information Act (insofar as any environmental issues relate to FOI or Privacy).</i>	Any issues that may relate to environmental protection, freedom of information and or privacy.	NIL	If an EPA is to be established, from the outset, the model must achieve an appropriate balance between environmental protection and government and private interests. Points out that Issues about personal privacy will be raised in the

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
								discussion regarding the creation of an EPA.
Department of Health and Community Services	Mr Robert Griew CEO	14/01/04	Mr Xavier Schobben Director of Environmental Health 8922 7152	NIL	<ul style="list-style-type: none"> • <i>Waste Management and Pollution Control Act (administered by DIPE)</i> • <i>Public Health Act,</i> • <i>Food Act</i> • <i>Poisons and Dangerous Drugs Act</i> • <i>Radiation (Safety Control) Act</i> • <i>Public Health (General Sanitation) Regulations</i> • <i>Public Health (Nuisance Prevention) Regulations</i> 	Environmental health within public health overlaps with environmental protection. Involved in environmental protection through the Environmental Health Program. The Program has a legislative focus and carries out a number of environmental protection activities for the Health. Provision of environmental health comment on EIS, Public Environmental Reports,	The Environmental Health Program consists of Aboriginal & Community Environmental Health; Environmental Health Standards; Environmental Planning, Sanitation and	NOT SPECIFIED

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					<ul style="list-style-type: none"> <i>Water Act (administered by DIPE)</i> 	Environmental Audit Reports, Development applications; advice on national environmental policies ie. ESD, air quality, national environmental protection measures; advice on gene technology, including GM food & information on maximum residue levels of pesticides in food; co-development of guidelines for clinical waste and sanitary landfills & policy input & advice on the remediation of contaminated sites; monitors, controls and provides environmental/ environmental health advice on drinking water quality and recreational water quality to key stakeholders	Waste Management; Food safety; radiation protection and poisons control.	

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Department of Employment, Education and Training	Ms Katherine Henderson A/ Chief Executive	23/01/04	Mr Neil Watson Manager Policy & Strategic Planning	NIL	<ul style="list-style-type: none"> • <i>Work Health Act 1986</i> • <i>Work Health (Occupational Health and Safety Regulations (in relation to Work Environment, Demolition Work, Specific work processes ie. abrasive blasting, asbestos & spray painting</i> • <i>Ozone Protection Regulations (administered by DIPE)</i> • <i>Dangerous Goods (Packaging & transport) Act & Regulations</i> • <i>Radioactive Ores & Concentrates (Packaging &</i> 	Dealing with complaints received by NT WorkSafe on environmental issues eg. Noise and dust on worksites. The scale of complaints are generally of nuisance rather than dangerous levels & are within threshold limits for workers.	NOT SPECIFIED	NOT SPECIFIED

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
					<i>Transport) Act & Regulations.</i>			
Power and Water	Mr Kim Wood Managing Director	01/04/04	Mr Randall Scott Manager of Environmental Services	NIL	<ul style="list-style-type: none"> • <i>Power and Water Corporation Act</i> • <i>Environmental Assessment Act (administered by DIPE)</i> • <i>Water Act (administered by DIPE)</i> • <i>Waste Management and Pollution Control Act (administered by DIPE)</i> <p><i>Other pieces of legislation which have some bearing on Power and Water only impact on environmental matters in a minor way.</i></p>	<ul style="list-style-type: none"> • Subject to environmental regulation because of the nature of business • Environmental Assessment Act (new projects are referred to the Office of Environment and Heritage for assessment • Water Act (discharges to receiving waters from sewage treatment plants require a licence • Waste Management and Pollution Control Act (Office of Environment and Heritage is notified of any environmental incidents arising from Power & Water activities. 	NOT SPECIFIED	In favour of NT establishing an EPA. Has no recommendation on a model but would like to see a central regulating authority which would provide certainty for any corporation when taking environmentally relevant business decisions.

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Department of Community Development, Sport and Cultural Affairs	Mr Mike Dillon Chief Executive	23/01/04	Ms Penny Sullivan Director of Cross Agency Co-ordination	NIL	NIL	NIL	Agency currently in the process of formally developing environmental management issues into its asset management policies and procedures for housing.	NOT SPECIFIED

AGENCY	RECEIVED FROM	DATE RECEIVED	NOMINATED LIAISON OFFICER	ENVIRONMENTAL PROTECTION LEGISLATION ADMINISTERED BY THE AGENCY	OTHER LEGISLATION NOT ADMINISTERED BY THE AGENCY BUT WITH ENVIRONMENTAL IMPLICATIONS	LEGISLATIVE AND MANAGEMENT FUNCTIONS RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	CURRENT ACTIVITIES RELATING TO ENVIRONMENTAL PROTECTION/ MATTERS	POSITION ON THE INQUIRY/ COMMENTS
Office of the Ombudsman and Health & Community Services Complaints Commission	Ms Marion Trobbiani Executive Assistant	30/12/03	Mr Peter Boyce Ombudsman for the NT	NIL	NIL	NIL	NIL	NOT SPECIFIED
Department of Justice	Mr Greg Shanahan A/ Chief Executive Officer	07/01/04	Chief Executive Officer	NIL	NIL	NIL	NIL	NOT SPECIFIED
NT Auditor-General's Office	Mr Rob Richards	12/12/03	Auditor-General	NIL	NIL	NIL	NIL	NOT SPECIFIED
NT Tourist Commission	Mr Mark Love-Linay	20/12/03	Mr Mark Love-Linay	NIL	Northern Territory Tourist Commission Act (Administered by the Minister for Tourism)	NIL	NIL	NOT SPECIFIED

APPENDIX 3: LIST OF WRITTEN SUBMISSIONS RECEIVED

Table A3:1: Written Submissions Received

SUBMISSION NO.	RECEIVED FROM
1.	Mr Sean Robert Meaney Private Citizen
2.	Mr Duncan Dean Convenor Save Darwin Harbour Group
3.	Mr Jim B Forwood AM Chairman Landcare Council of the Northern Territory
4.	Ms Sandy Marty Indigenous Land Management Facilitator Central Land Council
5.	Mr Tom Harris President Northern Territory Horticultural Association
6.	Mr Les Avory c/o BLASTMASTER
7.	Ms Mardijah Simpson Private Citizen
8.	Mr John Armstrong President Northern Territory Cattlemen's Association
9.	Mr Steve Peters Private Citizen
10.	Mr Dave Wormald Chief Executive Officer Tennant Creek Town Council
11.	Mr Mike Blake Auditor-General for the Northern Territory Northern Territory Auditor-General's Office

12.	Mr Mike Hindle Town Administrator Nhulunbuy Corporation Limited
13.	Mr David Galvin General Manager Indigenous Land Corporation
14.	Mr David Higgins President Katherine Horticultural Association
15.	Ms Sonia Bazzacco ALEC Management Committee Member Arid Lands Environment Centre Inc.
16.	Mr Peter Adamson Lord Mayor Darwin City Council
17.	Mr Peter Visentin Shire Manager Litchfield Shire Council
18.	Mr Peter Chambers Chief Executive Department of Infrastructure, Planning and Environment
19.	Mr Peter Blake Chair Ministerial Advisory Committee on Aquaculture in the NT
20.	Mr David Ashbridge A/ Chief Executive Officer Department of Health and Community Services
21.	Mr Noel Preece Principal Environmental Scientist EcOz Environmental Services

22.	Mr Barry Berwick Chief Executive Officer Darwin Port Corporation
23.	Professor Helen Garnett FTSE, FAICD Vice-Chancellor Charles Darwin University
24.	Mr Peter Shoyer Information Commissioner Office of the Information Commissioner NT
25.	Mr Kim Wood Managing Director Power and Water
26.	Mr John Harrison Executive Director Amateur Fishermen's Association
27.	Ms Pauline Benaim Commissioner's Office NT Police, Fire and Emergency Services
28.	Ms Kezia Purick Chief Executive Officer Northern Territory Minerals Council Inc.
29.	Ms Carole Frost Chief Executive Officer Chamber of Commerce Northern Territory

30.	Prepared By Ms Lee McIntosh LLM, LLB, BSc Environmental Consultant On behalf of: Environment Centre of the Northern Territory, Australian Conservation Foundation, Threatened Species Network, World Wide Fund for Nature Australia, Australian Marine Conservation Society and Environmental Defender's Office (NT) Inc.
31	Mr Mike Burgess Chief Executive Officer Department of Business, Industry and Resource Development
32.	Mr Matthew O'Reilly Secretary NT Greens
33.	Ms Lorna Woods Keep Australia Beautiful Council

APPENDIX 4: LIST OF ATTENDEES AT PUBLIC HEARINGS

Table A4.1: Katherine Public Hearing – 31 May 2004

NAME	ORGANISATION
J. Etty	Organic Producers Association of NT Inc.
Pancho Jack	KTC
Sharon Hillen	Katherine Landcare Group
Anne Shepherd	KTC
Elisabeth Clark	Bush Nursery
David Higgen	Katherine Horticulture Association

Table A4.2: Tennant Creek Public Hearing - 1 June 2004

NAME	ORGANISATION
Rod Swanson	T.C Auto Spares
Dave Wormald	Tennant Creek Town Council
Mirie Fogarty	Peko
Michael Dougall	NTG
Peter Egan	NTG
Gayle Dougall	Barkly Electorate
Naomi Bannister	Community Member
Neil Price	DBIRD Mines & Energy
Coleen Westorer	Barkly Landcare

Table A4.3: Alice Springs Public Hearing - Thursday 3 June 2004

NAME	ORGANISATIONS
Glenn Marshall	Arid Lands Environment Centre
Col Stanton	D.I.P.E
Lok Fields	Alice Springs Town Council
Jill Weighell	N.T.T.C
Pete Turner	Private citizen
Bill Low	Low Ecological Services

Table A4.4: Darwin Public Hearing – 11 June 2004

NAME	ORGANISATION
Matthew O'Reilly	NT Greens
Peter McLinden	Local Government Association of NT
Rowan Hutson	Bechtel
Jarrad Holmes	Threatened Species
Peter Robertson	ECNT
Tom Cowen	Environment Defenders Office
Penny Doust	ABC
Andrew Buick	NT Government
Barbara Singer	Former Executive Director OEH
Steve Sutton	OEH/DIPE
Geoff Casey	Private
Rachel Wedd	NLC
Tony Schaard	PCC
Luccio Cercarelli	Palmerston Council
V Taylor	Private Citizen
M Taylor	Private Citizen
Gordon Elvers	Private Citizen
Amanda Ward	Private Citizen
Susan Penfold	Arafura Timor Research Facility
Angelika Hesse	DCC
Mark Wakeham	NT Greens/ ECNT
Gary Scott	Private Citizen
Jas Anand	DIPE
Lorna Woods	KAB
Michelle Andrews	Dept. of Environment, WA
Alan Hughes	DBIRD
Ian Prince	DBIRD
L Davies	NT.Minerals Council
R Wilson	NT.Minerals Council
N Henwood	NT.Minerals Council
K Purick	NT Minerals Council
Lisa Victor	NT Minerals Council
Steven Vellacott	NT Minerals Council
Duncan Dean	SDHG
Alison Buchanan	ABC
Adam Troy	Student/cdu

Table A4.5: Palmerston Public Hearing – 19 July 2004

NAME	ORGANISATION
Duncan Dean	Save Darwin Harbour Group

**APPENDIX 5: COMPARISON TABLE OF EXISTING EPA MODELS
 AUSTRALIA AND NEW ZEALAND**

Table A5.1: Comparison of Existing EPA Models, Australia And New Zealand

STATE / COUNTRY	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATIONAL STRUCTURE	BUDGET/COSTS (pa)	STAFFING	ADVISORY BODIES	REPORTING
<p>WESTERN AUSTRALIA</p> <ul style="list-style-type: none"> Environmental Protection Authority (EPA) Independent Authority Close association with the Department of Environment Protection Neither the Authority nor the Chairman is subject to the direction of the Minister, however they are accountable to the Minister for the delivery of its functions and responsibilities. The EPA consists of 5 members appointed by the Governor on the recommendation of the Minister. The EPA makes recommendations 	<p>The EPA was established under the <i>Environmental Protection Act, 1986</i> (WA)</p> <p>This Act is administered by the Department of Environment, Water and Catchment Protection (DEWCP or the Department - the Water and Rivers Commission, Department of Environmental Protection and Keep Australia Beautiful Council are effectively operating as one under the working title of Department of Environment, Water and Catchment Protection.)</p> <p>The Department administers regulation requirements of the EP Act.</p> <p>Amendments to the Act are currently being debated in WA Parliament. Amendments include:</p> <ul style="list-style-type: none"> introduction of serious environmental harm offence 2 new sections that list authorisations that provide a defence against a charge of environmental harm 	<p><i>Environmental Protection Act 1986</i>, s7(15)</p> <p>It is the objective of the Authority to use its best endeavours:</p> <p>(a) to protect the environment; and (b) to prevent, control and abate pollution.</p>	<p>Established by Parliament as an Independent Authority.</p> <p>Neither the Authority nor the Chairman is subject to the direction of the Minister.</p> <p>EPA is NOT a regulatory agency nor does it issue approvals, but can, at the Minister's request, become involved in such processes. For instance, from time to time, the Minister may delegate his/her power to the EPA to approve items such as 'Environmental Management Plans' on a case-by-case basis.</p> <p>Appeals against EPA decisions are managed through the Appeals Convenor attached to the Minister's office.</p>	<p>The functions of the Authority are —</p> <p>(a) to conduct environmental impact assessments;</p> <p>(b) to consider and initiate the means of protecting the environment and the means of preventing, controlling and abating pollution;</p> <p>(c) to encourage and carry out studies, investigations and research into the problems of environmental protection and the prevention, control and abatement of pollution;</p> <p>(d) to obtain the advice of persons having special knowledge, experience or responsibility in regard to environmental protection and the prevention, control and abatement of pollution;</p> <p>(e) to advise the Minister on environmental matters generally and on any matter which he may refer to it for advice, including the environmental</p>	<p>The Authority consists of 5 members appointed by the Governor on the recommendation of the Minister on account of their interest in, and experience of, matters affecting the environment generally</p> <ul style="list-style-type: none"> 1 full-time Chairman (Mr Bernard Bowen) 1 part-time Deputy Chairman (Dr Elizabeth Mattiske) 3 part-time members (see full text) <p>Term: Maximum of 5 years</p> <p>Approximately 50 staff in EPA Service Unit</p>	<p>ADMINISTRATION COSTS (as provided in 2002-2003 Annual Report)</p> <p>\$772,000 (2002-2003)</p> <p>\$630,000 (2001-2002)</p> <p>\$584,000 (2000-2001)</p> <p>\$649,000 (1999-2000)</p>	<p>Office of the Chairman and the EPA Service Unit</p> <p>34 staff (2001-2002 Annual Report). These are officers of the Department of the Environment.</p> <p>The Service Unit carries out a variety of functions for the EPA, primarily environmental impact assessment and preparation of draft EPA reports, research and co-ordination functions in relation to the environment, and the preparation of draft Environmental Protection Policies (EPPs).</p> <p>The EPA is also authorised to access other expertise within the Department of Environment</p>	<p>The Advisory Council to the EPA (ACTEPA) is comprised of a cross-section of members of the community. Appointees are individuals who can bring to the table a range of perspectives and expertise from industry, conservation and technical fields, rather than representing particular groups. Currently there are eleven members.</p> <p>The EPA seeks advice from agencies, including the Department of Environment, Water and Catchment Protection (DEWCP), Department of Planning and Infrastructure (DPI) and WA Planning Commission (WAPC), the Department of</p>	<p>The EPA is accountable to the Minister for the discharge of its duties, functions and responsibilities, and for the quality of advice it provides.</p> <p>The Department through the Director General is accountable to the Minister, and Parliament through the Auditor General for performance of its functions, the efficient and effective use of public money and therefore all other resources. This includes the resources of the EPA Service Unit while the day to day operation is delegated from the Director General to the relevant Directors.</p> <p>Publications:</p> <ul style="list-style-type: none"> Annual Report State of the

STATE / COUNTRY	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATI ONAL STRUCTURE	BUDGET/C OSTS (pa)	STAFFING	ADVISORY BODIES	REPORTING
<p>Key Features</p> <p>ns to the Minister for Environment. These must be made public.</p> <ul style="list-style-type: none"> The EPA has an attached advisory council. Small number of support staff Access to expertise of DEWCP Act reviewed after 5 years of commencement of the Act. <p>EPA Source: http://www.epa.wa.gov.au/</p> <p>Department of Environmental Protection Source: http://www.environment.wa.gov.au/</p>			<p>1. The Authority has all such powers as are reasonably necessary to enable it to perform its functions.</p> <p>2. The Authority may, on matters relevant to the purposes of this Act, confer and collaborate with Departments of the Commonwealth or of Territories or other States, or other agencies, bodies or instrumentalities of the Commonwealth or of</p>	<p>protection aspects of any proposal or scheme, and on the evaluation of information relating thereto;</p> <p>(f) to prepare, and seek approval for, environmental protection policies;</p> <p>(g) to promote environmental awareness within the community and to encourage understanding by the community of the environment;</p> <p>(h) to receive representations on environmental matters from members of the public;</p> <p>(i) to provide advice on environmental matters to members of the public;</p> <p>(j) to publish reports on environmental matters generally;</p> <p>(k) to publish for the benefit of planners,</p>	<p>(Members are not public servants.)</p>			<p>Conservation and Land Management (CALM), the Conservation Commission of Western Australia (CCWA) and the Marine Parks and Reserves Authority (MPRA).</p> <p>The EPA undertakes an array of consultative processes relating to proposals being assessed. These include: public review of proposed documentation for proposals either being formally assessed or for which a Strategic Environmental</p>	<p>Environment Report</p> <ul style="list-style-type: none"> Environmental Impact Assessment Report (made public) Public Bulletins Position statements (provide overarching principles and information which EPA use when giving advice to the Minister, the public, proponents and decision-makers. Guidance statements (provides direction to proponents in developing their proposals for EIA.

STATE / COUNTRY Key Features	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATIONAL STRUCTURE	BUDGET/COSTS (pa)	STAFFING	ADVISORY BODIES	REPORTING
<p>Other Source: Pamphlet, "Role and Functions of the EPA", provided by EPA WA.</p>			<p>Territories or other States having to do with environmental protection.</p> <p>3. Without limiting the generality of this section, the Authority, if it considers it appropriate or is requested to do so by the Minister, may:</p> <p>4. Invite any person to act in an advisory capacity to the Authority in relation to all or any aspects of its functions;</p> <p>5. Advise the Minister on any matter relating to this Act or on any proposals, schemes or questions that may be referred to it with regard to environmental matters;</p> <p>6. Request the Minister to seek information on environmental</p>	<p>builders, engineers or other persons guidelines to assist them in undertaking their activities in such a manner as to minimise the effect on the environment of those activities or the results thereof;</p> <p>(l) to keep under review the progress made in the attainment of the objects and purpose of this Act;</p> <p>(m) to co-ordinate all such activities, whether governmental or otherwise, as are necessary to protect, restore or improve the environment in the State;</p> <p>(n) to establish and develop criteria for the assessment of the extent of environmental change or pollution;</p> <p>(o) to specify standards and criteria, and the methods of sampling and testing to be used for any purpose;</p> <p>(p) to promote, encourage, co-ordinate or carry out planning and projects in</p>				<p>Review is being undertaken; participation at public meetings held by proponents to give advice on the EIA process and to respond to questions; conduct EPA-initiated public meetings where there is a degree of public sensitivity, usually after the close of the formal public review period, to provide feedback on the key environmental issues raised and to receive any other environmental issues the community requests the EPA to consider in its assessment of the proposal. These meetings also provide an opportunity for the EPA to inform the community of the likely timing of the EPA's advice to the Minister for the</p>	<p>Instruments</p> <ul style="list-style-type: none"> • Government endorsed statutory Environment Protection Policies • Environmental conditions set by the Minister for the Environment on development proposals assessed by the EPA • Bodies, including Government, government agencies, local government, stakeholders and the community, implementing the EPA's policies and advice as provided or modified.

STATE / COUNTRY Key Features	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATI ONAL STRUCTURE	BUDGET/C OSTS (pa)	STAFFING	ADVISORY BODIES	REPORTING
			<p>management from any other Minister and, on receipt of that information, to give it to the Authority;</p> <p>7. Consider and make proposals as to the policy to be followed in the State with regard to environmental matters;</p> <p>8. Conduct and promote relevant research;</p> <p>9. Undertake investigations and inspections;</p> <p>10. Publish reports and provide information and advice on the environment to the</p>	<p>environmental management; and (q) generally, to perform such other functions as are prescribed.</p> <p>Provides overarching environmental advice to the Minister for the Environment and Heritage through the preparation of environmental protection policies and the assessment of development proposals and management plans, as well as providing public statements about matters of environmental importance.</p> <p>The EPA seeks advice from agencies, including the Department of Environment, Water and Catchment Protection (DEWCP), the Department of</p>				<p>Environment on a proposal and appeal rights available; participation at stakeholder meetings; and receiving briefings from stakeholder groups at meetings of the EPA Board on issues of importance.</p>	

STATE / COUNTRY Key Features	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATI ONAL STRUCTURE	BUDGET/C OSTS (pa)	STAFFING	ADVISORY BODIES	REPORTING
			<p>community at large for the purpose of increasing public awareness of the environment; and</p> <p>11. Exercise such powers, additional to those referred to in paragraphs (a) to (g), as are conferred on the Authority by this Act or as are necessary or convenient for the performance of the functions imposed on the Authority by this Act.</p>	<p>Planning and Infrastructure (DPI), the West Australian Planning Commission (WAPC), the Department of Conservation and Land Management (CALM), the Conservation Commission of Western Australia (CCWA) and the Marine Parks and Reserves Authority (MPRA).</p> <p>The EPA has a significant role to play in environmental regulation. The <i>EP Act</i> sets out that the Governor may, on the recommendation of the EPA, make regulations required or permitted by the Act to be prescribed or in relation to implementing a National Environmental Protection Measure.</p>					

STATE / COUNTRY Key Features	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATI ONAL STRUCTURE	BUDGET/C OSTS (pa)	STAFFING	ADVISORY BODIES	REPORTING
				<p>The EPA carries out a number of functions in pursuing its objectives including:</p> <ul style="list-style-type: none"> • environmental impact assessment; • formulating environmental policies; • co-ordinating activities necessary to protect, restore and improve the environment of the State; • seeking information and providing advice; and • carrying out studies, investigations and research into problems of environmental protection. 					

STATE / COUNTRY Key Features	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATIONAL STRUCTURE	BUDGET/ COSTS (pa)	STAFFING	ADVISORY BODIES	REPORTING
<p>SOUTH AUSTRALIA</p> <p>Environmental Protection Authority</p> <ul style="list-style-type: none"> Independent Board of 9 Members. The Chief Executive of the EPA is also Chair of the Board. The Chief Executive is directly accountable to the Board. The Board is accountable to the Minister. Strong regulatory powers Strong emphasis on environmental reporting. Large number of staff Separate but linked to the Department for Environment and Heritage 	<p>Administers:</p> <ul style="list-style-type: none"> the <i>Environment Protection Act 1993</i> (the Act) and the <i>Radiation Protection and Control Act 1982</i> (the RPC Act) <p>Other acts administered by the EPA include:</p> <ul style="list-style-type: none"> <i>National Environment Protection Council (South Australia) Act 1995</i> <i>Wingfield Waste Depot Closure Act 1999</i> <p>The EPA also has regulatory responsibilities under Acts within the jurisdiction of other state government agencies such as the <i>Aquaculture Act 2001</i> and <i>Development Act</i>.</p>	<p>Vision: "We want to achieve a healthy and valued environment."</p> <p>Purpose: "We will provide leadership to protect and enhance our environment by working with the community, industry and governments."</p>	<p>EPA is an independent administering agency.</p> <p>The EPA has regulatory powers (promoting and enforcing compliance).</p> <p>The Environment Protection Authority Board (the Board) is a statutory body established under the <i>Environment Protection Act 1993</i> to protect South Australia's environment.</p> <p>The EPA has delegated some of its powers to local government to deal with matters not licensed under the Act. The EPA assists these officers in training, provision of meters and ongoing technical and legal support. It is currently working with</p>	<p>The EPA has six divisions:</p> <ul style="list-style-type: none"> Corporate and Business Support Monitoring and Evaluation Operations Policy and Strategic Services Radiation Protection Pollution Avoidance <p>Significant administrative roles under the Act include: licensing prescribed activities of environmental significance; monitoring air, water quality, waste and noise; and investigating incidents that cause, or potentially cause, serious or material environmental harm. There are also other compliance and enforcement operations under the Act including assessing development applications of environmental significance referred by Councils or the Development Assessment Commission,</p>	<p>EPA: The Chief Executive of the EPA is also the Chair of the Board.</p> <p>EPA Board: The Board governs the administration of the Act and the activities of the EPA. The Board consists of 9 members, appointed by the Governor based on their practical knowledge and experience in defined areas.</p> <p>The EPA Chief Executive is directly accountable to the Board, to be subject to its control and direction, and to give effect to its policies and decisions.</p> <p>[In the previous arrangement (pre 10 April 2003 amendments</p>	<p>(2002-2003) Revenues from Government : \$10,504,000</p> <p>Total Revenue from ordinary activities (2002-2003): \$14,635,000</p> <p>This includes: \$2,318,000 (grants and contributions) \$11,347,000 (fees and charges)</p>	<p>206 staff (2002-2003)</p>	<p>The EPA actively promotes environmental awareness in the community through the formation and participation of community environment groups eg. Watercare, Waterwatch and Airwatch</p> <p>EPA holds annual stakeholder consultation conferences.</p> <p>Sharing Environmental Protection Responsibilities Trial The Sharing Environmental Protection Responsibilities Trial was implemented to identify issues that might be encountered by sharing environmental protection responsibilities between state and local government agencies under the Act.</p>	<p>Reports Annual Report</p> <p>State of the Environment Report</p> <p>Environmental Reporting website http://www.environment.sa.gov.au/reporting/about.html</p> <p>Instruments Environment Protection Policies</p>

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<p>Source: http://www.environment.sa.gov.au/epa/</p>			<p>local government to investigate opportunities for expanding the role of local government in environmental protection with a lower degree of environmental risk—generally those matters not licensed under the Act.</p> <p>SA Police continues to use the powers under the Act to help them manage local nuisance issues, particularly relating to domestic noise.</p>	<p>The EPA continues to manage community education and monitoring programs as well as undertaking ongoing policy development and legislative review.</p>	<p>to the Act), the Chief Executive was accountable directly to the Minister and not to the Board; thus the Board and the Chief Executive were jointly accountable in managing the EPA (albeit with different functions).]</p> <p>The Board:</p> <ul style="list-style-type: none"> • is independent and makes unbiased, balanced decisions based on the best available advice • is open and responsive 			<p>The EPA has developed a local government support package which provides a suite of tools to help councils deliver environment protection services to their local communities. It includes:</p> <ul style="list-style-type: none"> • technical support • legal advice • administrative tools • training • information technology (IT) support • equipment. 	

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					<p>with its stakeholders</p> <ul style="list-style-type: none"> • is professional in its business • is proactive and progressive • provides quality and timely information and advice • values the contribution of its support and partnership organisations • works constructively with the Environment Minister and government of the day. <p>7 Divisions:</p> <ul style="list-style-type: none"> • Office of the Chief Executive • Operations • Radiation Protection • Pollution Avoidance 				

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					<ul style="list-style-type: none"> Monitoring and Evaluation Policy and Strategic Services Corporate and Business Support 				

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NEW SOUTH WALES Environmental Protection Authority EPA staff contained within the Department of Environment and Conservation	Established under the <i>Protection of the Environment Administration Act, 1991</i> In carrying out its role, the EPA has responsibilities, powers, authorities, duties and functions under the following NSW legislation: <ul style="list-style-type: none"> <i>Contaminated Land Management Act 1997</i> <i>Environmentally</i> 	"Guiding the community to achieve and maintain a healthy environment in a productive NSW." The EPA has defined its mission to recognise the need for the active community	The EPA is a statutory body representing the Crown and is generally subject to Ministerial control, but NOT in relation to: <ul style="list-style-type: none"> the making of a report or recommendation to the 	The Protection of the Environment Administration Act 1991 sets two objectives for the EPA: 1. to protect, restore and enhance the quality of the environment in New South Wales, having regard to	The Director-General leads the organisation, is a member of the Board and is accountable to the Minister for the Environment. There are 10	\$98,296,000 (2001-2002) \$83,023,000 in NSW Government contributions + \$15,273,000 in retained revenue from grants	741 staff (approx) in 2001-2002	The Board has established 4 sub-committees in 2002 on water, waste, chemicals and economic instruments. The EPA supports a number of	Reports and gives advice to the Minister for the Environment. Annual Report NSW State of the Environment (tri-annual)

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<ul style="list-style-type: none"> Statutory body representing the crown subject to Ministerial control but not in relation to: 1. the making of a report or recommendation to the Minister; 2. the release of a state of the environment report (although the Minister can require more information in the report); and 3. the making of a decision to institute criminal or related proceedings. Headed by a board of 10 members. Board headed by a Chairperson EPA Director General heads the executive team. Thirteen (13) member executive; with each member being responsible for a different 	<ul style="list-style-type: none"> <i>Hazardous Chemicals Act 1985</i> <i>Environmental Trust Act 1998</i> <i>National Environment Protection Council (New South Wales) Act 1995</i> <i>Ozone Protection Act 1989</i> <i>Pesticides Act 1999</i> <i>Protection of the Environment Administration Act 1991</i> <i>Protection of the Environment Operations Act 1997</i> <i>Radiation Control Act 1990</i> <i>Recreation Vehicles Act 1983</i> <i>Road and Rail Transport (Dangerous Goods) Act 1997</i> <i>Unhealthy Building Land Act 1990</i> <i>Waste Avoidance and Resource Recovery Act 2001</i> (commenced 8 October 2001) <i>Waste Minimisation and Management Act 1995</i> (repealed 8 October 2001) 	<p>ownership of protection, restoration and enhancement of the environment.</p> <p>Key concepts underlying mission:</p> <ul style="list-style-type: none"> working in partnership with all sectors of the community, including governments, businesses and organisations sharing our roles with the whole community and recognising that both the community and the EPA 'own' environmental problems and provide solutions guiding community actions with a strong commitment to education, and using economic instruments as well as regulations restoring and enhancing the environment as well as preventing and controlling pollution recognising the link between a healthy environment and a sound economy: 	<p>Minister;</p> <ul style="list-style-type: none"> the release of a state of the environment report (although the Minister can require more information in the report); and the making of a decision to institute criminal or related proceedings. <p>If the Minister gives any direction or makes any determination concerning a licensing function, a report of the direction must be tabled in Parliament.</p> <p>The Board is independent with expertise in environment protection, agriculture, industry, environmental science, regional issues, law and local government.</p>	<p>the need to maintain ecologically sustainable development</p> <p>2. to reduce the risks to human health and prevent the degradation of the environment, by means such as the following:</p> <ul style="list-style-type: none"> promoting pollution prevention adopting the principle of reducing to harmless levels the discharge into the air, water or land of substances likely to cause harm to the environment minimising the creation of waste by the use of appropriate technology regulating the transportation, collection, treatment, storage and disposal of waste encouraging the reduction of the use of materials encouraging the reuse and recycling of materials encouraging 	<p>board members.</p> <p>The Board:</p> <ul style="list-style-type: none"> determines the policies and long-term strategic plans of the EPA oversees the effective management of the EPA determines whether the EPA should consent to prosecutions for serious environmental offences and ensures development of prosecution guidelines which are made available to the public. <p>On 24 September 2003, new Department of Environment and</p>	<p>received from other Government agencies, court costs awarded from prosecutions and interest on invested funds.]</p>		<p>statutory committees including the:</p> <ul style="list-style-type: none"> Beachwatch Advisory Committee Community Consultation Forums Hazardous Chemicals Advisory Committee Load-based Licensing Technical Review Panel NSW Council on Environmental Education NSW State of the Environment Advisory Council Pesticides Implementation Committee Radiation Advisory Council Site Auditor Accreditation Panel State Waste Advisory Council <p>The Director-</p>	<p>Technical Reports</p>

STATE / COUNTRY	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATI ONAL STRUCTURE	BUDGET/ COSTS (pa)	STAFFING	ADVISORY BODIES	REPORTING
<p>division within EPA.</p> <p>Source: http://www.epa.nsw.gov.au/corporate/index.htm</p>		<p>decision-making needs to be informed by economic and environmental concerns</p> <ul style="list-style-type: none"> • commitment to ecologically sustainable development. 		<p>material recovery</p> <ul style="list-style-type: none"> • adopting minimal environmental standards prescribed by complementary Commonwealth and State legislation, and advising the Government to prescribe more stringent standards where appropriate • setting mandatory targets for environmental improvement • promoting community involvement in decisions about environmental matters • ensuring the community has access to relevant information about hazardous substances arising from, stored, used or sold by any 	<p>Conservation was created incorporating the staff of the EPA.</p>			<p>General meets quarterly with representatives from the peak stakeholder groups:</p> <ol style="list-style-type: none"> 1. environment groups 2. industry groups 3. local government groups <p>EPA also conducts community consultation forums.</p>	

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				industry or public authority • conducting public education and awareness programs about environmental matters.					

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QUEENSLAND Environmental Protection Agency <ul style="list-style-type: none"> The EPA in Queensland is a Government Department of 9 divisions. Headed by a board of 3 members. Accountable to the Minister. Source: http://www.epa.qld.gov.au/about_the_epa/legislation/	At 30 June 2002 the Environmental Protection Agency administered all or parts of the: <ul style="list-style-type: none"> <i>Aboriginal Land Act 1991</i> (s83(2.11), s134 (as it applies to the provisions of the Act administered by the Minister) <i>Brisbane Forest Park Act 1977</i> <i>Coastal Protection and Management Act 1995</i> <i>Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987</i> <i>Currumbin Bird Sanctuary Act 1976</i> <i>Environmental Protection Act 1994</i> <i>Forestry Act 1959</i> (jointly administered with the Minister for Natural Resources and Minister for Mines; except to the extent administered by the Minister for Primary Industries and Rural Communities) <i>Gurulmundi Secure Landfill Agreement Act 1992</i> <i>Meaker Trust (Raine Island Research) Act 1981</i> <i>National Environment Protection Council</i> 	<i>To work with the community to protect our natural and cultural heritage and to achieve a healthy and sustainable environment as a foundation for social and economic wellbeing.</i> The Board's Charter: The Board's charter is to focus on the delivery of the Agency's three outputs: <ul style="list-style-type: none"> protecting our natural and cultural heritage; promoting sustainable use of our natural capital; and ensuring a clean environment. 	The EPA Queensland is a government department (formerly the Department of Environment and Heritage) with to administer all key Queensland environmental legislation.	Roles and responsibilities: <ul style="list-style-type: none"> environmental planning environmental policy and economics environmental operations with service delivery in Southern, Central and Northern Regions, sustainable industries, environmental and technical services public affairs corporate development, performance and risk The EPA deals with a wide range of environmental matters including: <ul style="list-style-type: none"> protecting air, water and soil quality; preventing or controlling noise and odour 	The EPA Board comprises the Director-General (Chair), Deputy Director General and Executive Directors of: Parks, Forestry and Wildlife, Policy, Planning, Environmental and Technical Services, Sustainable Industries and Operations. 9 divisions of which: 5 Divisions: Policy, Planning, Corporate Affairs, Corporate Development, and	\$312,216,000 (2002-2003) \$314,470,000 (2001-2002) \$272,251,000 (2000-2001) \$229,229,000 (1999-2000)	2367 staff (approx) as at 30 June 2002 (includes the Environmental Protection Agency and Queensland Parks and Wildlife Service)	No specific advisory bodies.	<ul style="list-style-type: none"> Quarterly reports to Treasury, required under Managing for Outcomes to report progress against agreed output measures; Performance reports to the Executive Management Group, describing performance of each Division and Region; Executive business plans and evaluation reports prepared by each member of the EMG, which assess achievements and results

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	<p><i>(Queensland) Act 1994</i></p> <ul style="list-style-type: none"> • <i>National Trust of Queensland Act 1963</i> • <i>Nature Conservation Act 1992</i> • <i>Newstead House Trust Act 1939</i> • <i>Queensland Heritage Act 1992</i> • <i>Recreation Areas Management Act 1988</i> • <i>Torres Strait Islander Land Act 1991 (s80(2.11), s131 (as it applies in relation to the provisions of the Act administered by</i> • <i>Transport Infrastructure Act 1994 (ss233 and 236)</i> • <i>Tweed River Entrance Sand Bypassing Project Agreement Act 1998</i> • <i>Wet Tropics World Heritage Protection and Management Act 1993</i> <p>The key pieces of Queensland environmental legislation are:</p> <ul style="list-style-type: none"> • <i>Environmental Protection Act 1994</i> • <i>Nature Conservation Act 1992</i> • <i>Marine Parks Act 1982</i> • <i>Coastal Protection and Management Act 1995</i> • <i>Queensland Heritage Act 1992</i> 			<p>pollution;</p> <ul style="list-style-type: none"> • researching biodiversity; • managing the state's coastline; • managing cultural heritage; and • promoting sustainable industry. <p>In addition, the EPA through the QPWS works closely with communities to foster sustainable use of natural resources and is responsible for:</p> <ul style="list-style-type: none"> • managing parks, forest and wildlife operations; • promoting management of key nature conservation areas; • planning and researching conservation strategies; • managing the protected area estate; • managing World Heritage areas; • encouraging greater community support for and involvement • promoting nature-based 	<p>Environmental and Technical Services: provide whole-of-agency functions and support.</p> <p>2 Divisions: Parks, and Forestry and Wildlife provide core functions of the Queensland Parks and Wildlife Service, which was established by the Government as an entity of the EPA.</p> <p>2 Divisions: Environmental Operations and Sustainable Industries provide functions in the area of environmental management services.</p> <p>The Board of Corporate Governance (BCG) is the Agency's executive</p>				<p>against the agreed objectives within a financial year; and</p> <ul style="list-style-type: none"> • The Ministerial Portfolio Statement for the Minister for Environment provides specific detail about the activities and strategic direction for the EPA. The MPS provides budgeted information for the financial year ahead and is the primary source of information for the hearings of the Parliamentary Estimates Committees. • Annual Report (including performance review) • QLD State of the

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				tourism and other ecologically sustainable businesses.	decision making group for corporate administration issues, and meets monthly. The Deputy Director-General chairs the BCG. Members include: Director-General; Executive Directors of Corporate Affairs, Corporate Development, Forestry and Wildlife and Sustainable Industries; Director, Public Affairs and a representative of Regional Directors.				Environment Report

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					<p>Several standing and special purpose committees report to the BCG. These include:</p> <ul style="list-style-type: none"> • Budget Committee; • Risk Management Committee; • Workplace Health and Safety Sub-Committee; and • Internal Audit Committee <p>Volunteers from across the state maintained a high level of community support for Agency programs and initiatives. Through participation in activities such as research and monitoring, public contact and interpretation, wildlife rescue</p>				

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					and care, administration, and developing and rehabilitating park areas, volunteers contributed greatly to conserving natural areas and wildlife.				

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<p>VICTORIA</p> <p>Environment Protection Authority</p> <p>And</p> <p>Environment Protection Board</p> <ul style="list-style-type: none"> • 2 separate but linked entities with separate powers and functions. • EPA is one person who holds direct regulatory powers and management responsibilities. • EPB maintains an overview of the administration and policies of the Authority, without having direct management or regulatory responsibility. • Both the EPA and the EPB are appointed by the Governor-in-Council on the advice of the 	<p>Acts</p> <p><i>Environment Protection Act 1970</i></p> <p><i>National Environment Protection Council (Victoria) Act 1995</i></p> <p><i>Pollution of Waters by Oil and Noxious Substances Act 1986</i></p> <p>Subordinate Legislation</p> <p><i>Environment Protection (Fees) Regulations 2001</i></p> <p><i>Environment Protection (Landfill Levy) Regulations 1992</i></p> <p><i>Environment Protection (Prescribed Waste) Regulations 1998</i></p> <p><i>Environment Protection (Residential Noise) Regulations 1997</i></p> <p><i>Environment Protection (Scheduled Premises and Exemptions) Regulations 1996</i></p> <p><i>Environment Protection (Vehicle Emissions) Regulations 1992</i></p> <p><i>Industrial waste management policy (Protection of the Ozone Layer)</i></p> <p><i>Industrial waste management policy (National Pollutant Inventory)</i></p> <p><i>Industrial waste management policy (Prescribed Industrial Waste)</i></p> <p><i>Industrial waste management policy (Waste Acid Sulphate Soils)</i></p> <p><i>Industrial waste management policy (Waste Minimisation)</i></p> <p><i>Pollution of Waters by Oil and Noxious Substances Regulations 1992</i></p> <p><i>State environment protection policy (Air Quality Management)</i></p> <p><i>State environment protection</i></p>	<p>EPA's Purpose and Values: Victoria's purpose is to enable the safe clean and sustainable environment that all Victorians seek. Our values are expressed as passion for the environment sound science, respect for people, community focus, integrity, co-operation and openness creativity and learning.</p>	<p>Established as a statutory body under the <i>Environment Protection Act 1970</i>.</p> <p>The Environment Protection Authority (The Authority or EPA) holds direct regulatory powers and management responsibilities.</p> <p>The role of the skills-based Environment Protection Board (The Board or EPB) is to maintain an overview of the administration and policies of the Authority, without having direct management or regulatory responsibility.</p> <p>The Board advises the Minister and the Chairman on broad strategic management issues.</p> <p>Both the EPA and the EPB are</p>	<p>The Act places clear statutory responsibilities upon the EPA and provides it with a very broad range of powers to deter potential environmental lawbreakers and to ensure that law-abiding businesses are not placed at a disadvantage by those who would break the law. However, without resiling from its role as a regulator, EPA is placing increasing emphasis on establishing strategic alliances and working partnerships for environment protection with industries, local governments and communities.</p>	<p>The EPA is a statutory body established under the <i>Environment Protection Act 1970</i>.</p> <p>The Authority comprises 1 member – the Chairman who is appointed by the Governor-in-Council on the recommendation of the Minister.</p> <p>The <i>Environment Protection (Amendment) Act 1996</i> created the EPB.</p> <p>There are 4 members of the Board, including the .</p> <p>The Board advises the Minister and the Chairman on broad strategic management issues.</p> <p>The Board's term of office is 3 years.</p>	<p>\$51,566,000 (2002-2003)</p> <p>\$47,131,000 (2001-2002)</p> <p>\$44,938,000 (2000-2001)</p> <p>\$39,573,000 (1999-2000)</p>	<p>368 (2002-2003)</p> <p>366 (2001-2002)</p> <p>341 (2000-2001)</p> <p>326 (1999-2000)</p> <p>317 (1998-1999)</p>	<p>Formally constituted committees and panels</p> <ul style="list-style-type: none"> • Analyst Assessment Panels • Advisory Committee for Onsite Wastewater Systems • Eastern Treatment Plant Advisory Panel • Environmental Audit (Contaminated Land) Panel • Industrial waste management policy (Prescribed Industrial Waste) - Advisory Committee • Neighbourhood Environment Improvement Plan Advisory Panel • Scientific Advisory Panel • Victorian Stormwater Advisory Committee • Yarraville 	<p>Reports to the Minister</p> <p>Environmental Quality Assessment Reports</p> <p>Environmental Impacts Assessment Reports</p> <p>Annual Report</p>

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<p>Minister for Environment.</p> <p>Source: http://www.epa.vic.gov.au/ and http://epanote2.epa.vic.gov.au/EPA/Publications.NSF/2f1c2625731746a44a256ce90001cb5/d9f73a6f74aff8c0ca256dcd00010355/\$FILE/communty%20and%20environment%20report.pdf and http://epanote2.epa.vic.gov.au/EPA/Publications.NSF/2f1c2625731746a44a256ce90001cb5/d9f73a6f74aff8c0ca256dcd00010355/\$FILE/compliance%20report.pdf</p>	<p><i>policy (Ambient Air Quality)</i> <i>State environment protection policy (Control of Music Noise from Public Premises)</i> <i>State environment protection policy (Control of Noise from Commerce, Industry and Trade)</i> <i>State environment protection policy (Groundwaters of Victoria)</i> <i>State environment protection policy (Lake Burrumbeet and Catchment)</i> <i>State environment protection policy (Prevention and Management of Contaminated Land)</i> <i>State environment protection policy (Siting and Management of Landfills Receiving Municipal Wastes)</i> <i>State environment protection policy (Used Packaging Material)</i> <i>State environment protection policy (Waters of Far East Gippsland)</i> <i>State environment protection policy (Waters of Lake Colac and Catchment)</i> <i>State environment protection policy (Waters of Dandenong Valley)</i> <i>State environment protection</i></p>		<p>appointed by the Governor-in-Council on the advice of the Minister for Environment.</p>		<p>Corporate Management Team of 8 members: the Acting Chairman, Acting Executive Director, Secretary and five directors. EPA directors occupy executive contract positions with appointments made through best practice recruitment and selection procedures.</p>			<p>Technical Advisory Panel</p>	

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	<i>policy (Waters of Wimmera and Catchment)</i> <i>State environment protection policy (Waters of Victoria)</i> <i>State environment protection policy (Western District Lakes)</i>								

STATE / COUNTRY Key Features	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATIONAL STRUCTURE	BUDGET (pa)	STAFFING	ADVISORY BODIES	REPORTING
<p>TASMANIA</p> <ul style="list-style-type: none"> Environmental Management and Pollution Control Board Independent statutory body Accountable to the Minister (Subject to provisions, the Minister may request that a matter be referred to the Minister for its decision under the Act.) The Board members include representatives from Government, industry and the community. 10 Board members (5 	<p><i>Environmental Management and Pollution Control Act 1994</i> (the EMPCA) establishes the Board.</p> <p>A number of the regulations made under the former <i>Environment Protection Act 1973</i> were "carried over" to EMPCA to provide the administrative structure and detail necessary for the implementation of the Act until new environmental policy instruments could be developed. These are:</p> <ul style="list-style-type: none"> <i>Environment Protection (Atmospheric Pollution) Regulations 1974</i> <i>Environment Protection (Water Pollution) Regulations 1974</i> <i>Environment Protection (Waste Management) Regulations 1974</i> <i>Environment Protection (Noise) Regulations 1977</i> <i>Environment Protection (Prohibited Fuels) Regulations 1991</i> <i>Environment Protection (Domestic Fuel Burning Appliances) Regulations 1993</i> 	<p>The fundamental basis of the EMPCA is the prevention, reduction and remediation of environmental harm. While this is defined very broadly in section 5 of the Act as, "<i>any adverse effect on the environment (of whatever degree or duration) and includes an environmental nuisance" (the latter is defined as 'the emission of a pollutant that unreasonably interferes with, or is likely to interfere with, a person's enjoyment of the environment')</i>",</p> <p>the clear focus of the Act is on preventing environmental harm from pollution and</p>	<p>The Board commenced in 1996.</p> <p>The Board has regulatory powers and responsibilities.</p> <p>The Board is not subject to the control and direction of the Minister in respect of any decision to institute, or approve of the institution of, criminal or civil proceedings.</p> <p>However, the Minister may give directions in writing to the Board requiring the Board to refer a matter for its decision under the Act to the Minister. Where this</p>	<p>The Board The Board is an independent statutory body, established as the key decision maker under EMPCA.</p> <p>The functions of the Board are to administer and enforce the provisions of this Act, and in particular, to use its best endeavours:</p> <ul style="list-style-type: none"> to protect the environment of Tasmania; to further the objectives of this Act; to ensure the prevention or control of any act or emission which causes or is capable of causing pollution; to co-ordinate all activities, whether governmental or 	<p>The Board members include representatives from Government, industry and the community.</p> <p>The Deputy Secretary and the Manager of Environmental Operations of the DPIWE are also Deputy Board members.</p> <p>The EMPCA specifies that the Board should consist of:</p> <ul style="list-style-type: none"> the Secretary of the Department who is the chairperson of the 	<p>PLEASE NOTE: Both the DPIWE Annual Report and the Board's web page were not clear about the allocation of funds for the administration of the Board's functions. These figures are deduced from the DPIWE Financial statements.</p> <p>Within the DPIWE the Environmental Management and Pollution</p>	<p>Apart from the Board, staff are provided by the DPIWE.</p> <p>Subject to and in accordance with the State Service Act 2000, persons may be appointed or employed for the purposes of this Act.</p> <p>The Secretary of the Department may make arrangements with the Head of a State Service Agency for State Service officers and State Service employees employed in that Agency to be made available to perform duties and functions under this Act,</p>	<p>The Board receives professional advice from officers of the Department (Environment Division) through assessments of Development Proposals and Environmental Management Plans (DPEMPs), development and management of Environmental Improvement Programs (EIPs), environmental audits of premises, environmental agreements and reporting of incidents, malfunctions and accidents.</p> <p>The Board may</p>	<p>Recommendations published in the Government Gazette</p> <p>Annual Report</p> <p>State of the Environment</p> <p>Public release of Discussion Papers</p> <p>Other Environmental Reports/ Publications</p>

STATE / COUNTRY	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATIONAL STRUCTURE	BUDGET (pa)	STAFFING	ADVISORY BODIES	REPORTING
<p>principal members and 5 Deputy Board members)</p> <ul style="list-style-type: none"> Secretary of the Department of Primary Industries Water and Environment (DPIWE) is also on the Chairperson of the Board. The Director of Environmental Management is the Deputy Chairperson of the Board. The Deputy Secretary and the Manager of Environmental Operations of the DPIWE are Deputy Board members. Members of the Board are to be appointed by the Governor. <p>EMPCA Source: http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/CDAT-53KURY?open</p> <p>DPIWE Source:</p>	<p>The following regulations have been made under EMPCA:</p> <ul style="list-style-type: none"> <i>Environmental Management and Pollution Control (Environment Improvement Program Fees) Regulations 1994</i> <i>Environmental Management and Pollution Control (Ozone Protection Authorisation Fees) Regulations 1995</i> <i>Environmental Management and Pollution Control (General Fees) Regulations 1995</i> <i>Environmental Management and Pollution Control (Transitional) Regulations 1995</i> <i>Environmental Management and Pollution Control (Infringement Notices) Regulations 1996</i> 	<p>waste management. The key offences, and some of the other statutory provisions, are limited to circumstances where environmental harm is caused by pollution.</p>	<p>occurs:</p> <p>(a) the Board must provide recommendations to the Minister on the matter; and</p> <p>(b) the Minister must cause the recommendations to be published in the <i>Gazette</i> within 14 days from the date on which they were received; and</p> <p>(c) the Minister may make a decision in relation to that matter.</p> <p>(d) A decision made by the Minister under these conditions takes effect as if it were a decision of the Board.</p>	<p>otherwise, as are necessary to manage the use of, protect, restore or improve the environment of Tasmania; and</p> <ul style="list-style-type: none"> to ensure that valuation, pricing and incentive mechanisms are considered in policy making and programme implementation in environmental issues. <p>Also</p> <p>The Board must perform such other functions as are conferred on it by or under this Act or any other Act.</p> <p>And</p> <p>The Board may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions.</p>	<p>Board; and</p> <ul style="list-style-type: none"> the Director who is the deputy chairperson of the Board; and a person with practical knowledge of, and experience in, environmental management in industry, commerce or economic development; and a person with practical knowledge of, and experience in, environmental conservation, environmental protection, natural resources management, management and 	<p>Control Division:</p> <p>\$838,000 (2001-2002)</p> <p>\$783,000 (2000-2001)</p> <p>Revenue from Fees and Fines (DPIWE)</p> <p>\$937,000 (2002)</p> <p>\$292,000 (2001)</p>	<p>and those officers and employees may hold office in conjunction with State Service employment.</p>	<p>establish committees, which may include persons who are not members of the Board, for the purpose of advising it on any matter arising in relation to the performance of its functions</p>	

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<p>Key Features</p> <p>http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/LBUN-5GF3JX/\$FILE/Annual%20Report%20FinState.pdf and http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/CBRT-5TH5R9/\$FILE/2002-03%20Annual%20Report.pdf</p> <p>The Act Source: http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=:doc_id=44%2B%2B1994%2BAT%40EN%2B20041020150000;histon=:prompt=:rec=:term=</p> <p>and http://www.thelaw.tas.gov.au/</p>					<p>prevention of waste or environmental health; and</p> <ul style="list-style-type: none"> a person with practical knowledge of, and experience in, environmental management in local government <p>The Board receives secretariat support from the Department of Primary Industries Water and Environment.</p>				

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<p>AUSTRALIAN CAPITAL TERRITORY</p> <p>ACT Commissioner for the Environment (The Commissioner)</p> <ul style="list-style-type: none"> The Commissioner is appointed by the Minister for the Environment and reports directly to the Minister. The Commissioner serves as an environmental ombudsman Only makes recommendations. <p>The Environmental Protection Authority (EPA)</p> <ul style="list-style-type: none"> is one person – who is the Director of Environment Protection, within Environment ACT, which is a division within the Department of Urban Services (DUS). The EPA 	<p>The Commissioner Established under the <i>Commissioner for the Environment Act 1993</i>. Source: http://www.legislation.act.gov.au/a/1997-92/current/pdf/1997-92.pdf</p> <p>The EPA/ DUS The <i>Environment Protection Act 1997</i> came into effect on 1 June 1998 replacing five separate pieces of legislation in the A.CT (<i>Air Pollution Act 1984; Water Pollution Act 1984; Noise Control Act 1988; Pesticides Act 1989; and Ozone Protection Act 1991</i>)</p> <p>The EPA replaced the Pollution Control Authority.</p> <p>The <i>Environment Protection Act, 1997</i> covers all environment protection activities including air pollution, noise pollution, water pollution and ozone protection.</p> <p>In general, if other legislation already deals with certain types of noise and air pollution, or those matters are not within ACT jurisdiction (as is primarily the case with aircraft), this Act does not apply. Therefore, the Act does not apply to noise made, or pollutants emitted into the air by:</p> <ul style="list-style-type: none"> trains; Commonwealth jurisdiction aircraft within the meaning of the <i>Commonwealth Aircraft Services Act 1985</i>; people (for example, a crowd); 	<p>The Commissioner Our Vision is for a society with the will to achieve a sustainable high quality environment for all.</p> <p>Our Mission is to develop understanding of changes in the condition of the environment, and of the pressures that are changing that condition; to encourage responses or actions across all sectors of the community to progressively improve the environment, and to work towards ecological sustainability.</p> <p>We will achieve our Mission by:</p> <ul style="list-style-type: none"> producing SoE reports that are interesting, authoritative, educative and informative and will be used as tools to manage our environment, and to educate children and adults, including public servants, the private sector and community 	<p>The Commissioner is empowered to investigate management of the environment by the Territory and its agencies and to prepare regular SoE Reports.</p> <p>EPA</p> <p>1. The issue of Environmental Authorisations for activities such as:</p> <ul style="list-style-type: none"> the use of ozone depleting substances; commercial incineration; commercial landfill; sewage treatment; motor sports; commercial use of pest chemicals; and regulating assessment and remediation of contaminated sites. 	<p>The Commissioner The Commissioner has the following functions:</p> <ul style="list-style-type: none"> investigating complaints regarding the management of the environment by the Territory or a Territory authority; conducting such investigations as may be directed by the Minister; conducting his or her own motion, investigations into actions of an agency where those actions would have a substantial impact on the environment of the Territory act as environmental ombudsman under s12(1)(a); the authority to obtain information from government agencies all relevant information for the fulfilment of my functions and the performance of those function should not be impeded or influenced by any 	<p>The Commissioner The Commissioner is appointed by the Minister for the Environment and reports directly to the Minister.</p> <p>The DUS The Government department responsible for infrastructure; waste and recycling management; transport, land, property and information management (similar to NT-DIPE).</p> <p>EPA</p> <ul style="list-style-type: none"> The EPA is one person. The Director of Environment Protection within the DUS, administers the Act and is the EPA. 	<p>The Commissioner: The budget for the Commissioner's office is a discrete cost-centre established as an Expense on Behalf of the Territory within the Environment ACT budget.</p> <p>The Act did not establish the Commissioner as a body corporate, therefore the financial reporting provisions of the <i>Financial Management Act</i> that apply to Territory corporations do not apply to the Commissioner.</p> <p>EPA/ Department of Urban</p>	<p>Office of the Commissioner 3 staff including: the Commissioner (who is employed part-time); and 2 permanent full-time public servants</p> <p>DUS– Environment ACT Division 10 senior staff (including the Chief Executive).</p> <p>DUS has 1560 staff in total.</p>	<p>EPA and the Department of Urban Services: Consultative Boards and Committees such as:</p> <ul style="list-style-type: none"> Environment Protection Technical Advisory Committee; and Natural Resource Management Committee <p>Environment advisory committees to give advice on environment and heritage issues to customers eg:</p> <ul style="list-style-type: none"> the Natural Resource Management Committee and the Environment Protection Technical Advisory Committee <p>Participation in national environmental forums such as:</p> <ul style="list-style-type: none"> Review of Ministerial 	<p>The Commissioner State of the Environment Report</p> <p>Special Reports direct to the Minister and then when they are presented to the ACT Legislative Assembly they become public.</p> <p>Typically, reports of investigation arising from complaints are not made public unless there has been considerable community involvement in the investigation.</p> <p>Makes reports in capacity as Environmental Ombudsman to the Minister and related agencies.</p> <p>EPA Only Public notification of receipt of applications, grants, reviews and agreements made under the Environment</p>

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<p>Key Features</p> <p>administers the <i>Environment Protection Act</i>.</p> <ul style="list-style-type: none"> The Chief Executive of DUS is also the Environment Management Authority and leads the DUS. Focus on good management of the environment largely achieved by co-operative measures focused on good environmental management practices rather than penalties as a means of deterrent. An independent appeals tribunal can agree with, change or reject the original 	<ul style="list-style-type: none"> animals; motor vehicles being driven on a public street, unless they meet the criteria set out in subsection 8(1)(e). In this case, the provisions of the Act dealing with noise made or pollutants emitted into the air apply to motor vehicles. <p>In addition, the legislation does not apply to environmental harm resulting solely from, or alleged to result solely from, design and siting of human made structures.</p> <p>The Act imposes a general duty on people to 'take such steps as are practicable and reasonable to prevent or minimise environmental harm or environmental nuisance caused, or likely to be caused, by an activity conducted by that person' (section 22).</p> <p>Environmental Acts Administered by the Department of Urban Services-Environment ACT Division <i>Water Resources Act, 1998</i> In brief, the objectives of the WR</p>	<p>groups</p> <ul style="list-style-type: none"> responding to needs to investigate specific aspects of management of the environment, by the Territory and its agencies maintaining independence and objectivity in both our SoE reporting and investigative functions. <p>EPA The objectives of the Environment Protection Act, 1997, are to:</p> <ul style="list-style-type: none"> Protect the environment; Ensure decision-making incorporates ecologically sustainable development principles; Establish a single and integrated 	<p>2. The making of Environmental Protection Agreements in relation to an activity with the person who is conducting, or proposing to conduct, activities such as:</p> <ul style="list-style-type: none"> major land development or construction activities; growing, harvesting and managing forests; the production of concrete or concrete products; the preservation of wood materials for 	<p>agency or officer and</p> <ul style="list-style-type: none"> the power to delegate all or part of his/her functions to a public servant. <p>The Commissioner DOES NOT have the power to make or amend decisions. The Commissioner's powers are confined to recommendations.</p> <p>EPA Objectives are met by:</p> <ul style="list-style-type: none"> granting environmental authorisations; promoting environmental awareness; entering into environment protection agreements; developing codes of practice with industry; issuing 	<ul style="list-style-type: none"> The position is a specific A.C.T public service position. The Chief Executive is also the Environment Management Authority (in line with administering the objects of the Act set out in section 3. <p>Department of Urban Services As well as its other roles, the Department of Urban Services acts</p>	<p>Services Unable to obtain financial statements off EPA/Department of Urban Services Web Pages.</p>		<ul style="list-style-type: none"> Councils National Resource Management Ministerial Council; Environment Protection and Heritage council; and the Primary Industries Ministerial Council Regional Leaders Forum Environment Committee <p>Partnerships with co-operative research centres</p> <p>Community consultation</p>	<p>Protection Act 1997 (the Act)</p> <p>All Annual Report(s)</p> <p>Australian Capital Region State of the Environment Report and the Australian State of the Environment Report</p>

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<p>Key Features</p> <p>decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with Tribunal recommendations.</p> <p>The Commissioner Source: http://www.environmentcommissioner.act.gov.au/annualreport2002-03pdf.pdf</p> <p>EPA Source: http://www.environment.act.gov.au/airandwater/enprotectact97/enprotectauth.html</p> <p>DUS Source: http://www.urbanservices.act.gov.au/</p> <p>Environment ACT Source: http://www.urbanservices.act.gov.au/Files/pdf/annualreport0203c.pdf</p>	<p>Act are to:</p> <ul style="list-style-type: none"> ensure the use and management of the Territory's water resources are sustainable while protecting the ecosystems that depend on the waterways; protect waterways and aquifers from damage; and ensure water resources are able to meet the reasonably foreseeable needs of future generations. <p>Under the WR Act, licences or permits are issued for a variety of activities including taking water, water bore drillers, bore construction and water control structures.</p> <p><i>Animal Diseases Act, 1993</i> <i>Animal Welfare Act, 1992</i> <i>Clinical Waste Act, 1990</i> <i>Commissioner for the Environment Act, 1993</i> <i>Domestic Animals Act, 2000</i> <i>Fertilisers Act, 1904</i> <i>Fisheries Act, 2000</i> <i>Heritage Objects Act, 1991</i> <i>Lakes Act, 1976</i> <i>Land (Planning and Environment) Act, 1991</i> (except PartIII and Section 254 and Division 6.6) <i>National Environment Protection Council Act, 1994</i> <i>Nature Conservation Act 1980</i> <i>Plant Diseases Act, 1934</i> <i>Pounds Act 1928</i> <i>Protection of Lands Act, 1937</i> <i>Stock Act, 1991</i> <i>Tree Protection Interim Scheme Act, 2001</i></p>	<p>regulatory framework for environmental protection; and</p> <ul style="list-style-type: none"> Encourage responsibility by the whole community for the environment-general environmental duty of care. 	<p>commercial purposes using chemicals; and</p> <ul style="list-style-type: none"> the manufacture of things in furnaces or kilns. <p>3. The enforcement of the Act. If individuals or businesses fail to meet their obligations under the Act, they may be subject to a number of measures. These include:</p> <ul style="list-style-type: none"> On the spot fines; Environment protection orders (which may require an action to stop the pollution, or minimise the harm caused); or Prosecution. <p>The Chief Executive has the authority to delegate his/her</p>	<p>environment protection notices; and</p> <ul style="list-style-type: none"> a range of other instruments. <p>The Act covers all environment protection activities in air pollution, noise pollution, water pollution and ozone protection.</p> <p>Environment ACT has the following divisions:</p> <ul style="list-style-type: none"> Environment Planning and Legislation Environment Protection Wildlife Research and Monitoring Heritage Resource Management Parks and Conservation Education Marketing and Communications 	<p>as a regulator, ensuring compliance standards are maintained in relation to construction trade licensing; land development and construction; the natural, cultural and built heritage; pollution control; environment protection; public transport; road user safety; and parking control.</p> <p>ACT Administrative Appeals Tribunal The Tribunal is an independent body. It can review on their merits a large number of decisions made by ACT Government ministers, officials and statutory authorities.</p> <p>The Tribunal</p>				

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			<p>powers under the Act to another public employee.</p> <p>Under the Environment Protection Act 1997, most decisions of the EPA, such as the granting of Environmental Authorisations, may be reviewed by the <u>Administrative Appeals Tribunal</u>.</p> <p>Environment ACT</p>		<p>can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with Tribunal recommendations.</p>				

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<p>NEW ZEALAND</p> <p>Ministry for the Environment</p> <ul style="list-style-type: none"> is a Government Department Responsible to the Minister (policy advisor) <p>Parliamentary Commissioner for the Environment</p> <ul style="list-style-type: none"> Parliamentary Officer responsible to Parliament through the Speaker of the House of Representatives (policy reviewer) Strong emphasis on reporting <p>MOE Source: http://www.mfe.govt.nz/about/do.html</p> <p>The Commissioner Source: http://www.pce.govt.nz/about/pce_about.shtml</p>	<p>Both the Ministry and the Commissioner were established under the <i>Environment Act 1986</i></p> <p>The major environmental laws in New Zealand:</p> <ul style="list-style-type: none"> <i>Resource Management Act 1991</i> <i>Biosecurity Act 1993</i> <i>Climate Change Response Act 2002</i> <i>Conservation Act 1987</i> <i>Crown Minerals Act 1991</i> <i>Energy Efficiency and Conservation Act 2000</i> <i>Environment Act 1986</i> <i>Fisheries Act 1996</i> <i>Forests Act 1949 (with 1993 amendment)</i> <i>Hazardous Substances and New Organisms Act 1996</i> <i>Ozone Layer Protection Act 1996</i> <i>Resource Management Act 1991</i> <i>Soil Conservation and Rivers Control Act 1941</i> <i>Wildlife Act 1953</i> 	<p>The Ministry: Our vision is for a healthy environment that sustains nature and people – kia kaha to tatou tiaki inga taonga tuku iho o Papatuanuku me Ranginui.</p> <p>Our mission is making a difference through environmental leadership – ko te mahi whakangahau tatou ka taea.</p> <p>The Commissioner:</p>	<p>The Ministry: Advisory role.</p> <p>The Commissioner: The Commissioner (PCE) has all the powers that are necessary to carry out his functions under the <u>Environment Act 1986</u>, including powers to:</p> <ul style="list-style-type: none"> obtain information and examine any person under oath (and to protect the confidentiality of this information where it is appropriate); act as a Commission of Inquiry (at Parliament's request); appear and be heard at any proceedings relating to the obtaining of statutory consents (i.e. resource consents under the Resource 	<p>The Ministry: 1. To advise the Minister on all aspects of environmental administration including:</p> <p>(a) Policies for influencing the management of natural and physical resources and ecosystems so as to achieve the objectives of this Act</p> <p>(b) Significant environmental impacts of public or private sector proposals, particularly those that are not adequately covered by legislative or other environmental assessment requirements currently in force:</p> <p>(c) Ways of ensuring that effective provision is made for public participation in environmental planning and policy formulation processes in</p>	<p>The Chief Executive, Deputy Chief Executive and four general managers comprise the Ministry's Senior Management Group.</p> <p>The Secretary of the Environment is the administrative head of the Ministry.</p> <p>4 Main Business Groups:</p> <ol style="list-style-type: none"> Working with Central Government Working with Local Government Sustainable Industry and Climate Change Corporate and Community 	<p>The Ministry: \$40,582,000 GST inclusive (2003-2004)</p> <p>In addition, the Ministry administers government funding through the Sustainable Management Fund, Environmental Legal Assistance grants, grants to environment centres, and support for orphan contaminated sites.</p> <p>Office of the Commissioner: \$2,244,000 (2003-2004)</p>	<p>The Ministry: 200 staff (approx)</p> <p>The Commissioner: Office of the Commissioner 17 staff</p> <ul style="list-style-type: none"> environmental investigators (10 staff) <u>Office Solicitor</u> Senior management team comprising the Commissioner, the <u>Director Citizens' Concerns</u>, and the <u>Assistant Commissioner</u> Support team managed by the Manager of Corporate Services (3 staff) <p>The Commissioner may from time to time appoint any person with expert knowledge, or who is otherwise</p>	<p>The Ministry reports to the Minister.</p> <p>The Ministry publishes reports and guidelines, run seminars and workshops, and meets regularly with representatives of key stakeholder groups.</p> <p>The Commissioner reports directly to Parliament.</p>	<p>The Ministry: Annual Report</p> <p>State of the Environment Report</p> <p>Publication of environmental reports</p> <p>The Commissioner: Annual Report Publication of reports of investigations Parliamentary Reports</p>

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			<p>Management Act); and</p> <ul style="list-style-type: none"> • employ staff and consultants. • Power to report and make recommendations • advise Parliament of the findings of investigations • Has NO formal power to ensure that the advice or recommendations will be implemented 	<p>order to assist decision making, particularly at the regional and local level</p> <p>2. To solicit and obtain information from any source and to conduct and supervise research, so far as it is necessary for the formulation of advice to the Government on environmental policies:</p> <p>3. To provide the Government, its agencies and other public authorities with advice on:</p> <p>(a) The application, operation and effectiveness of the Acts specified in the Schedule to this Act in relation to the</p>			<p>able to assist the Commissioner, to make such inquiries, conduct such research, and make such reports as the Commissioner considers will better enable the Commissioner to exercise and perform the Commissioner's powers and functions under this Act.</p>		

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				<p>achievement of the objectives of this Act:</p> <p>(b) Procedures for the assessment and monitoring of environmental impacts</p> <p>(c) Pollution control and the co-ordination of the management of pollutants in the environment</p> <p>(d) The identification and likelihood of natural hazards and the reduction of the effects of natural hazards</p> <p>(e) The control of hazardous substances, including the management of the manufacture, storage, transport, and disposal of hazardous substances</p> <p>4. To facilitate and encourage the resolution of conflict in relation to policies and proposals which may affect the environment</p> <p>5. To provide and disseminate information and services to promote</p>					

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				<p>environmental policies, including environmental education and mechanisms promoting effective public participation in environmental planning</p> <p>6. Generally to provide advice on matters relating to the environment</p> <p>7. To carry out any other functions that may be conferred on the Ministry by any enactment.</p> <p>The Ministry for the Environment advises the Government on New Zealand's environmental laws, policies, standards and guidelines, monitors how they are working in practice, and takes any action needed to improve them. This</p>					

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				<p>includes making sure that the Treaty of Waitangi is taken into account in environmental management.</p> <p>The Ministry's role also includes providing the information and advice that local government, businesses and the wider community need to make environmental policy work in practice.</p> <p>The Commissioner may:</p> <ul style="list-style-type: none"> investigate any matter where the environment may be, or has been adversely affected; assess the capability, performance and effectiveness of the New Zealand system of environmental management; and provide advice and information that will assist people to maintain and improve the quality of the environment. <p>It is the Environment Commissioner's job</p>					

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				<p>to hold the Government to account for its actions in respect of the environment by reporting on its effectiveness and suggesting improvements.</p> <p>Environmental systems guardian The Commissioner may check the capability of an environmental management regime (including institutional arrangements, legislation, policies and generation of necessary knowledge) to ensure that the quality of the environment is maintained or improved</p> <p>Environmental ombudsman To improve public authority</p>					

STATE / COUNTRY Key Features	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATI ONAL STRUCTURE	BUDGET (pa)	STAFFING	ADVISORY BODIES	REPORTING
				<p>accountability the Commissioner may investigate citizens' concerns about the environmental management and planning performance of public agencies</p> <p>Information provider, facilitator and catalyst The Commissioner disseminates information to a wide variety of groups and individuals to stimulate high quality debate and action on environmental issues</p> <p>Environmental management auditor The Commissioner may evaluate the performance of public authorities to ensure they are meeting their environmental responsibilities</p> <p>Advisor to Parliamentary select committees The Commissioner responds to requests from Select Committees to provide advice and assistance</p> <p>The Commissioner's</p>					

STATE / COUNTRY Key Features	LEGISLATION ADMINISTERED/ AFFECTED	OBJECTIVE/ POLICY STATEMENT	POWERS	FUNCTIONS/ OBJECTIVES	ORGANISATI ONAL STRUCTURE	BUDGET (pa)	STAFFING	ADVISORY BODIES	REPORTING
				<p>role is to provide an independent check on the system of environmental management and the performance of public authorities on environmental matters.</p> <p>The primary objective of the office is to contribute to maintaining and improving the quality of the environment in New Zealand through advice given to Parliament, local councils, business, tangata whenua, communities and other public agencies.</p>					

**APPENDIX 6: COMPARISON OF PENALTIES FOR ENVIRONMENTAL
OFFENCES, AUSTRALIA AND NEW ZEALAND**

Table A6.1: Comparison of Penalties for Environmental Offences, Australia and New Zealand²²⁰

AUSTRALIAN STATE/NEW ZEALAND	KEY FEATURES	Maximum Penalties (Most Severe Offences)			Medium Level Penalties (Severe Offences)			Lower Level Penalties (Less Severe Offences)		
		Example of Offence / Type of Offence	Individual	Body Corporate	Example of Offence / Type of Offence	Individual	Body Corporate	Example of Offence / Type of Offence	Individual	Body Corporate
Western Australia	<ul style="list-style-type: none"> Three main tiers of offences The <i>Environmental Protection Amendment Bill, 2002</i> includes the new offence of unauthorised environmental harm: – material environmental harm and serious environmental harm, which are Tier 1 offences. 	A person who intentionally or with criminal negligence: (a) causes pollution; or (b) allows pollution to be caused; commits an offence.	\$500,000 or 5 years jail or both Continuing Offence Daily Penalty - \$100,000	\$1,000,000 Continuing Offence Daily Penalty - \$200,000	A person who causes pollution or allows pollution to be caused commits an offence.	\$250,000 or 3 years jail or both Continuing Offence Daily Penalty - \$50,000	\$500,000 Continuing Offence Daily Penalty - \$100,000	77(1) Discharges into atmosphere or waters from vehicles or vessels (1) A person who is the owner or driver of a vehicle or vessel to which is fitted a device referred to in section 78(1) and who does not maintain that device, or cause it to be maintained, in an efficient condition commits an offence.	\$5,000 Continuing Offence Daily Penalty - Not specified	\$5,000 Continuing Offence Daily Penalty - Not specified
South Australia	<ul style="list-style-type: none"> Three main tiers of offences Makes distinction between environmental harm and environmental nuisance The <i>Environment Protection (Miscellaneous) Amendment Bill 2003</i> (The Bill) introduces civil penalties levied on an offender as an alternative to prosecution and court conviction where offence not intended and environmental consequences not too great. The Bill also widens and 	Causing serious environmental harm, intentionally or recklessly	\$120,000	\$1,000,000	Causing material environmental harm, intentionally and or recklessly	\$120,000	\$250,000	Causing an environmental nuisance, intentionally or recklessly	\$30,000	\$30,000

²²⁰ Compiled by the Sessional Committee on Environment and Sustainable Development, from the Websites and Annual Reports of the organisations compared in the table. Correct as at 26th February 2004

AUSTRALIAN STATE/NEW ZEALAND	KEY FEATURES	Maximum Penalties (Most Severe Offences)			Medium Level Penalties (Severe Offences)			Lower Level Penalties (Less Severe Offences)		
		Example of Offence / Type of Offence	Individual	Body Corporate	Example of Offence / Type of Offence	Individual	Body Corporate	Example of Offence / Type of Offence	Individual	Body Corporate
	<p>clarifies definitions and scope of the terms “environmental harm”, “environmental nuisance” and “pollutant”.</p> <ul style="list-style-type: none"> Allows the Environment Resources and Development Court (ERD Court) to make orders for a range of civil remedies upon application by various parties, including any person with the leave of the Court. 									
Victoria	<ul style="list-style-type: none"> No apparent distinction between penalties for major offences committed by corporations and individuals Specifies daily penalty for continuing an offence after conviction or EPA has served notice of contravention (whichever is the earlier) Highest maximum penalty amount set for an individual offender (out of all EPAs in this research). 	<p>Pollution of land so that the condition of the land is so changed as to make or be reasonably expected to make the land or the produce of the land:</p> <p>(a) noxious or poisonous;</p> <p>(b) harmful or potentially harmful to the health or welfare of human beings;</p> <p>(c) poisonous, harmful or</p>	<p>\$2,400,000</p> <p>Continuing Offence Daily Penalty - \$120,000</p>	<p>\$2,400,000</p> <p>Continuing Offence Daily Penalty - \$120,000</p>	<p>Any person who dumps or abandons or permits to be dumped or abandoned a particular kind of industrial waste—</p> <p>(a) at a place not being a site licensed to accept industrial waste of that kind under this Act; or</p> <p>(b) at a site which is licensed to accept industrial waste under this Act without the knowledge or consent of the</p>	<p>\$500,000</p> <p>Continuing Offence Daily Penalty - \$250,000</p>	<p>\$500,000</p> <p>Continuing Offence Daily Penalty - \$250,000</p>	<p>Aggravated littering: If the court is satisfied that the offence involved:</p> <p>(a) the intentional deposit of glass, metal, earthenware or crockery; or</p> <p>(b) the intentional deposit of litter that was a danger to any person or animal or to any land, waters or vehicle; or</p> <p>(c) the intentional</p>	<p>\$4,000 plus \$6,000 or imprisonment for 1 month or both</p>	Not specified

AUSTRALIAN STATE/NEW ZEALAND	KEY FEATURES	Maximum Penalties (Most Severe Offences)			Medium Level Penalties (Severe Offences)			Lower Level Penalties (Less Severe Offences)		
		Example of Offence / Type of Offence	Individual	Body Corporate	Example of Offence / Type of Offence	Individual	Body Corporate	Example of Offence / Type of Offence	Individual	Body Corporate
		potentially harmful to animals, birds or wildlife; (d) poisonous, harmful or potentially harmful to plants or vegetation; (e) obnoxious or unduly offensive to the senses of human beings; or (f) detrimental to any beneficial use made of the land; as well as other provisions.			licence holder—is guilty of an indictable offence.			deposit of litter on, from or towards any vehicle.		
New South Wales	<ul style="list-style-type: none"> Three tier regime of offences Highest maximum jail term set (out of all EPAs in this research). 	Tier 1 offences are the most serious offences and cover certain waste disposals, leaks, spillages and other escapes, and ozone depleting emissions. Tier 1 offences can be categorised as offences requiring: <ul style="list-style-type: none"> proof of wilfulness or negligence and harm or likely harm to the environment. 	\$250,000 and or 7 years jail	\$1,000,000	Tier 2 offences consist of all other offences under the Act and regulations, including water pollution, air pollution, land pollution (eg littering) and noise pollution offences. These offences are generally categorised as 'strict liability' offences ie the prosecution is not required to prove intent.	\$120,000 Continuing Offence Daily Penalty - \$60,000	\$250,000 Continuing Offence Daily Penalty - \$120,000	Tier 3 offences are not separate offences. They are Tier 2 matters that have been designated in the regulations as being capable of being dealt with by way of penalty notice. The amount of the penalty is set by the regulations and may not exceed the maximum penalty that can be imposed by a court for the offence.	Same as Tier 2 Offences	Same as Tier 2 Offences
Queensland	<ul style="list-style-type: none"> Threshold amount for penalties specified rather than a minimum or maximum amount for "Serious" and "Material" Environmental Harm. 	Serious environmental harm is environmental harm (other than environmental nuisance):	≥ \$50,000	Not specified	Material environmental harm is environmental harm (other than environmental nuisance): (a) that is not trivial or negligible in nature,	≥ \$5,000	Not specified	Environmental nuisance is unreasonable interference or likely interference with an environmental value	\$3,000	\$3,000

AUSTRALIAN STATE/NEW ZEALAND	KEY FEATURES	Maximum Penalties (Most Severe Offences)			Medium Level Penalties (Severe Offences)			Lower Level Penalties (Less Severe Offences)		
		Example of Offence / Type of Offence	Individual	Body Corporate	Example of Offence / Type of Offence	Individual	Body Corporate	Example of Offence / Type of Offence	Individual	Body Corporate
	<ul style="list-style-type: none"> • Maximum amount determined by offences specified in Environmental Policy Regulations: <ul style="list-style-type: none"> - Environmental Protection (Air) Policy Regulation 1997 - Environmental Protection (Interim Waste) Regulation 1996 - Environmental Protection (Noise) Policy 1997 - Environmental Protection (Waste Management) Policy 2000 - Environmental Protection (Waste Management) Regulation 2000 - Environmental Protection (Water) Policy 1997 - Environmental Protection Regulation 1998 	<ol style="list-style-type: none"> 1. that causes actual or potential harm to environmental values that is irreversible, of a high impact or widespread; or 2. that causes actual or potential harm to environmental values of an area of high conservation value or special significance; or 3. that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount; or 4. that results in costs of more than the threshold amount being incurred in taking appropriate action to: 5. prevent or minimise the harm; 			<ol style="list-style-type: none"> (b) extent or context; or that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount but less than the maximum amount; or (c) that results in costs of more than the threshold amount but less than the maximum amount being incurred in taking appropriate action to: <ol style="list-style-type: none"> i. prevent or minimise the harm; and ii. rehabilitate or restore the environment to its condition before the harm. 			caused by: <ol style="list-style-type: none"> (a) noise, dust, odour, light; or (b) an unhealthy, offensive or unsightly condition because of contamination; or (c) another way prescribed by regulation. 		

AUSTRALIAN STATE/NEW ZEALAND	KEY FEATURES	Maximum Penalties (Most Severe Offences)			Medium Level Penalties (Severe Offences)			Lower Level Penalties (Less Severe Offences)		
		Example of Offence / Type of Offence	Individual	Body Corporate	Example of Offence / Type of Offence	Individual	Body Corporate	Example of Offence / Type of Offence	Individual	Body Corporate
		and 6. rehabilitate or restore the environment to its condition before the harm.								
Tasmania	<ul style="list-style-type: none"> Continuing offences distinguished between continuing offence after 1st notice and subsequent conviction and continuation after conviction 	Serious environmental harm by polluting the environment, intentionally or recklessly	\$250,000 and or 4 years imprisonment	\$1,000,000	Serious environmental harm by polluting the environment	\$120,000	\$250,000	Depositing a pollutant to be deposited, in a place or position where it could reasonably be expected to cause material environmental harm	\$60,000	\$120,000
ACT	<ul style="list-style-type: none"> Three tiers of offences further distinguished by three levels of intent or consciousness Best defined regime of offences and penalties Highest maximum penalty set for Corporations (out of all EPAs in this research). Discussion Paper for the Review both the <i>Environment Protection Act 1997</i> and the role of the ACT's EPA, released in November 2003. 	Serious environmental harm	\$200,000	\$5,000,000	Material environmental harm	\$100,000	\$500,000	Environmental harm	\$10,000	\$50,000
New Zealand	<ul style="list-style-type: none"> Unable to obtain detailed information on offences and penalties on the Internet 	Where any harmful substance or contaminant or water is discharged in the coastal marine area in breach of s15B, the following persons each commit an offence: (a) if the discharge is from a ship,	\$200,000 or 2 years jail Continuing Offence Daily Penalty - \$10,000	Not specified	Contravention or permits the contravention of any of the following: (a) s22, which relates to failure to provide certain information or an enforcement officer; (b) s42, which relates to the protection of sensitive information	\$10,000 Continuing Offence Daily Penalty – \$1,000	Not specified	(a) Wilfully obstructs, hinders, resists or deceives any person in the execution of any powers conferred on that person by or under this Act	\$1,500	Not specified

AUSTRALIAN STATE/NEW ZEALAND	KEY FEATURES	Maximum Penalties (Most Severe Offences)			Medium Level Penalties (Severe Offences)			Lower Level Penalties (Less Severe Offences)		
		<i>Example of Offence / Type of Offence</i>	<i>Individual</i>	<i>Body Corporate</i>	<i>Example of Offence / Type of Offence</i>	<i>Individual</i>	<i>Body Corporate</i>	<i>Example of Offence / Type of Offence</i>	<i>Individual</i>	<i>Body Corporate</i>
		the master and the owner of the ship (b) if the discharge if from an offshore installation, the owner of the installation.			(c) any excessive noise direction under s327; (d) any abatement notice for unreasonable noise under s322(1)(c); (e) any order (other than an enforcement order) made by the Environment Court					

**APPENDIX 7: COMPARISON OF MAXIMUM PENALTIES FOR
ENVIRONMENTAL OFFENCES, AUSTRALIA AND NEW
ZEALAND**

Table A7.1: Comparison of Maximum Penalties for Environmental Offences, Australia and New Zealand²²¹

	Individual Penalty	Corporation Penalty
HIGHEST MAXIMUM	Victoria \$2,400,000 Continuing Offence Daily Penalty - \$120,000 Queensland – No maximum set	Australian Capital Territory \$5,000,000 Continuing Offence Daily Penalty - Not specified Queensland – No maximum set
LOWEST MAXIMUM	South Australia \$120,000 Queensland Threshold ≥ \$50,000 (no max set)	Western Australia South Australia New South Wales Tasmania \$1,000,000 Queensland Threshold of ≥ \$50,000 (no max set)
HIGHEST MAXIMUM FOR CONTINUING OFFENCE DAILY PENALTY	Victoria \$120,000	Western Australia \$200,000
LOWEST MAXIMUM FOR CONTINUING OFFENCE DAILY PENALTY	New Zealand \$10,000	Victoria \$120,000
HIGHEST JAIL TERM	New South Wales \$250,000 and or 7 years jail	Not set by any EPA looked at in this research
LOWEST JAIL TERM	New Zealand \$200,000 or 2 years jail	Not set by any EPA looked at in this research

²²¹ Compiled by the Sessional Committee on Environment and Sustainable Development, from the Websites and Annual Reports of the organisations compared in the table. Correct as at 26th February 2004